STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 25002 Permit 17287 License _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE AND AMENDING THE PERMIT

WHEREAS:

1. Permit 17287 was issued to Cambria Community Services District on May 9, 1978 pursuant to Application 25002.

2. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (SWRCB).

3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

4. Permit Condition 12 pertaining to the continuing authority of the SWRCB should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition # of the permit be amended to read:

   COMPLETE APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE MADE ON OR BEFORE December 31, 2005 (0000009)

2. Condition 12 of the permit be amended to read:

   Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

   The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure

compliance with the quantity limitations of this permit and to determine accurately water useas against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

Dated: OCTOBER 22 1996

for Edward C. Anton, Chief
Division of Water Rights

SURNAME/FILES

(916) 324-5621

JUNE 07 1990

In Reply Refer
to:331:WV:25002

To: Enclosed Mailing List

Ladies and Gentlemen:

ORDERS WR 88-14 AND 88-22 OF THE STATE WATER RESOURCES CONTROL BOARD, SAN SIMEON CREEK UNDERFLOW IN SAN LUIS OBISPO COUNTY

It has recently come to our attention that there are several typographical errors in the above orders of the State Board. Order 88-14 added three conditions to Permit 17287 issued on Application 25002 of the Cambria Community Services District but numbered them incorrectly. The three conditions which were added were numbered 21, 22, and 23. These conditions are herein corrected to read 23 in lieu of 21, 24 in lieu of 22 and 25 in lieu of 23.

These corrections are being made to Orders WR 88-14 and 88-22 pursuant to Water Code Section 1359 and Board Resolution 90-16.

Sincerely,

ORIGINAL SIGNED BY

Walter G. Pettit, Chief
Division of Water Rights

Enclosure

!WVANDYCK:ym:L25002:6/4/90

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P 17287

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 17287, Issued on Application 25002, CAMBRIA COMMUNITY SERVICES DISTRICT, Permittee, COASTAL RESIDENTS UNITED, INC.; JOHN PEDOTTI; CLYDE WARREN, Complainants	ORDER: WR 88- 22 SOURCE: San Simeon Creek COUNTY: San Luis Obispo

ORDER AMENDING PERMIT AND
DISMISSING PETITION FOR RECONSIDERATION

BY THE BOARD:

1.0 **INTRODUCTION**

The Board having issued Order WR 88-14 on July 21, 1988; Order WR 88-14 having amended the terms and conditions of Permit 17287; Cambria Community Services District having filed a petition for reconsideration of that order; and the petition having been duly considered; the Board finds as follows:

2.0 **GROUNDS FOR RECONSIDERATION**

Section 768 of Title 23 of the California Code of Regulations provides that reconsideration of a Board decision or order may be requested for any of the following causes:

a. A procedural irregularity which has prevented the petitioner from receiving a fair hearing;

b. The decision is not supported by substantial evidence;

c. There is relevant evidence available which, in the exercise of reasonable diligence, could not have been produced at the hearing; or

d. An error in law.

3.0 SUMMARY OF PETITION

Cambria Community Services District (CCSD or District) filed a petition for reconsideration of Order WR 88-14 on August 22, 1988. The petition requests revisions of two provisions of the order on the grounds that the provisions are not supported by substantial evidence.

The first revision requested is that the Board revise the definition of when the dry period diversion limitations specified in Permit Condition 5 come into force.[1] The sentence of Permit Condition 5 in question states:

1 The references to permit conditions in this order refer to the permit conditions as added or amended by Order WR 88-14.

> "The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date surface flow first ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre feet per annum."

CCSD requests that the word "first" be deleted from the foregoing provision of Permit Condition 5.

The second revision requested is that the Board delete part d of Permit Condition 21 which requires CCSD to take one of three specified actions to maintain a supply of water at well 11C1 operated by Jon Pedotti.

If the Board does not delete part d of Permit Condition 21, the District requests in the alternative that: (1) the Board add a phrase to part d of Condition 21 to clarify that well 11C1 is entitled to protection against interference from CCSD operations only if it becomes unusable "under reasonable methods of diversion", and (2) that the Board specify an additional alternative action which CCSD may take in order to maintain a supply of water to well 11C1. Part d of Permit Condition 21 presently requires CCSD to maintain a supply of water to the place of use served by well 11C1 through improvements to well 11C1, installation of a new well, or delivery of water from CCSD's point of diversion. The additional alternative

suggested in the petition for reconsideration is that CCSD be allowed to "provide a physical connection from well 10A3 or other downstream Pedotti well to the place of use served by well 11C1."

4.0 RESPONSES FILED IN OPPOSITION TO THE PETITION FOR RECONSIDERATION

Written responses opposing the petition for reconsideration were filed by Jon Pedotti, the Coastal Residents United, and Clyde Warren and Susan Keller. The responses all review evidence from the record[2] which supports the conclusions and requirements of Order WR 88-14 and all urge that the petition for reconsideration be denied.

5.0 ANALYSIS OF ISSUES RAISED BY PETITION FOR RECONSIDERATION

5.1 Definition of Dry Period For Purposes of Permit 17287 Diversion Limitations

Water Right Order WR 88-14 provides that the quantity of water which may be diverted from San Simeon Creek underflow by CCSD during the "dry period" shall not exceed 370 acre-feet. Three hundred and seventy acre-feet is the maximum amount of water ordinarily available to the District during the annual dry period after the demands of upstream riparians are satisfied.

2 Any references to factual matters which are not part of the evidentiary record were disregarded by the Board.

The dry period is defined in Permit Condition 5 as being the period "between the date surface flow first ceases at the Palmer Flats gaging station and October 31 of each year." The underlying assumption for the dry period diversion limitation is that at any time there is surface flow present at Palmer Flats, then recharge of the San Simeon Creek basin is occurring. When there is no surface flow at the Palmer Flats gaging station, all parties have assumed that there is little or no recharge of the quantity of water in channel storage. No evidence was presented at the hearing establishing a more accurate means of determining when the water in channel storage was being recharged. Consequently, Order WR 88-14 recognized the date when surface flow at Palmer Flats first ceases as triggering the beginning of the dry season diversion limitations. Different wording of Condition 5 was proposed in the Board's draft order, but the District objected. The present wording was adopted at the July 21 Board meeting with the consent of the District. Nevertheless the petition for reconsideration requests that the word "first" be deleted from the second sentence of Permit Condition 5. Condition 5 presently reads as follows:

"The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow first ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit."

CCSD contends that the evidence shows a record of erratic surface flow in San Simeon Creek which could result in an early cessation of surface flow shortly after the first of the year followed by a resumption of surface flow after spring rains. By starting the dry period diversion limitations when surface flow <u>first</u> ceases, the existing wording of Permit Condition 5 could result in a period during which the 370 acre-feet limitation would apply even in years in which later rains substantially recharge the quantity of water in channel storage. Deleting the word "first" from Condition 5, as requested by the District would avoid this problem.

This change by itself, however, would create another problem. For example, if season runoff ended early,

then any subsequent diversion of water by CCSD or riparian users would deplete the quantity of water remaining in channel storage. If a lengthy period of no flow were followed by a brief resumption of surface flow several weeks later, it would be unreasonable to conclude that the brief resumption of surface flow has fully recharged the storage capacity of the basin.

In order to address the concern of the District regarding intermittent flows and to meet the objective of beginning the dry season diversion limitations when channel storage is at full capacity, the Board concludes that Condition 5 should be amended to read as follows:

> "The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow ~~first~~ ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. As used in this permit, 'the date when surface flow ceases' refers to the date of cessation of seasonal runoff during the winter or spring months. Any question regarding the date of cessation of seasonal run-off in a particular year shall be resolved by the Chief of the Division of Water Rights upon request of any legal user of water from San Simeon Creek. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the

permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit."

The evidence in the record is insufficient to establish more exact criteria for determining the date when the dry season diversion limitations should start each year. As amended, Permit Condition 5 will give the District the benefit of the right to use water made available by any resumption of seasonal runoff following an early cessation of surface flow after the first of the year. Under the amended language, however, it is clear that a brief period of intermittent flow which occurs after the cessation of seasonal runoff will not change the date used in determining when the 370 acre-foot limitation commences.

5.2. Basis For Requiring CCSD To Maintain Supply of Water To Area Served by Well 11C1

The District makes several arguments in support of its contention that it should not be required to maintain a supply of water to the place of use served by well 11C1. The arguments can be divided into two categories. First, the District argues that well 11C1 is not a reasonable method of diversion. Second, CCSD argues that its use of water does not adversely affect

water levels at well 11C1 because: (1) factors other than District pumping "control" water levels at well 11C1; (2) Wells 10M2, 10A2 and 10A3 are located closer to the District's wells, but they have never gone dry or become unpumpable; (3) the lowest static water level at well 11C1 was reached in 1977 before CCSD pumping began rather than in 1985 as stated in Order WR 88-14; (4) there is no "direct correlation" between changes in low water levels in the CCSD wells and the change in the low water level in 11C1 for the same period of time; and (5) there was still standing water in well 11C1 in 1985 when the well became unpumpable. Each of these contentions is addressed below.

Beginning with the assertion that well 11C1 is not a reasonable method of diversion, we note that the record establishes that well 11C1 is a relatively new well drilled as a replacement well for well 11B1 in 1977. The well bottoms in bedrock and Mr. Pedotti testified he had no problems with the well until the fall of 1985 at the time when CCSD conducted its yield test. Contrary to the inferences in the District's petition, it is not necessary to drill test holes, do geologic logging, conduct geophysical surveys, or to perform aquifer pumping tests at various rates in order to

qualify as using a reasonable method of diversion. To the contrary, as stated in Order WR 88-14, a water user "cannot be compelled to divert according to the most scientific methods" available. (Erickson v. Queen Valley Ranch Co. (1971) 22 Cal.App.3d 378, 584, 99 Cal.Rptr. 446).

Moreover, in this instance, the District introduced no evidence establishing that any alternative location of well 11C1 or any other method of operation would be better suited to meet the riparian water demand in the area served by the well. Mere speculation that there may be some method to improve operation of the well does not lead to the conclusion that the well is an unreasonable method of diversion. In view of the facts that the well is relatively new, it bottoms in bedrock, and it had experienced no problems prior to 1985, the Board sees no reason to reconsider its prior determination that well 11C1 provides a reasonable method of diversion.

With respect to the District's contention that District use of water does not adversely affect water levels at well 11C1, the Board finds that the evidence shows that District use of water clearly can have an adverse effect on water levels at well 11C1. CCSD argues that

other factors "control" water levels at well 11C1. The Board agrees that water use from other riparian wells and the length of the dry season do have an effect on water levels at well 11C1, but that is not the issue. The issue is whether CCSD's pumping under a junior right adversely affects the availability of water to serve the senior riparian use at well 11C1.

The evidence of CCSD's adverse effect on well 11C1 is convincing. In 1985, the water level in well 11C1 was within several feet of its historic high level at the beginning of the dry period; the length of the dry period was about average (165 days) for the period of record; and the quantity of water pumped from well 11C1 was less than the previous year. Yet, by the end of the dry period, the water level in well 11C1 was similar to that recorded during the 1976-1977 drought. The only identified change in conditions on San Simeon Creek which explains the low water level in well 11C1 is that 1985 was the year of the District's "yield test" in which District water diversions increased to a new high.

The District's petition next contends that the fact that wells 10M2, 10A2, and 10A3 have never become dry or unpumpable supports the conclusion that District

pumping does not adversely affect well 11C1 which is located even further upstream from the District well field. While it is true that wells 10M2, 10A2 and 10A3 have not gone dry or become unpumpable, the hydrographs for well 10A3, well 11C1 and almost all hydrographs in the record (CCSD, 15) show that the static water levels of the wells are affected by CCSD pumping. Wells 10M2 and 10A3, however, are located in an area of having a thicker water bearing zone than is present at well 11C1. Well 10A2 is used for domestic and stockwatering purposes and, therefore, it would not be expected to have as high a demand for water as well 11C1 which is used for irrigation. As was explained in Order WR 88-14, each of the wells has to be examined on an individual basis. Evidence that certain other wells in the basin have not been rendered inoperable does not undermine the conclusion that the District's use of water adversely affects water levels at well 11C1.

CCSD's petition for reconsideration does identify one minor error in Order WR 88-14. The order mistakenly states that the static water level at well 11C1 reached an all time low in October of 1985. In fact, as CCSD points out, at the end of the severe two year drought of 1976 and 1977, the water level in well 11C1 was slightly below the 1985 water level. The District

provides no citation to the record for the specific water level elevations referred to in the petition, but the relative elevations in 1977 and 1985 can be seen on the hydrograph of well 11C1. (CCSD, 15.) The significant point is that while the lowest water levels in 1985 and 1977 were very similar, the hydrologic conditions were very different. In 1977, the dry period lasted 309 days and the total annual flow at Palmer Flats was 636 acre-feet. In 1985, the dry period was only 165 days and the total annual flow at Palmer Flats was 6,822 acre feet.

As explained in Order WR 88-14, the only plausible explanation for the low water level in 1985 was the increase of underflow pumping in the basin. The District diverted 366 acre-feet or nearly 70 percent of the total dry season diversions of San Simeon Creek underflow in 1985. Thus, the evidence in the record supports the conclusion that, as the principal dry season diverter, CCSD did affect the water level in well 11C1. The fact that the water level was slightly lower in 1977 does not contradict this conclusion.

The low water level in well 11C1 recorded in 1977 shows that there is a possibility that well 11C1 could become unpumpable in some years even in the absence of CCSD

pumping. It should be stressed, however, that the low water level in 1977 came at the end of a severe two-year drought when the runoff at the Palmer Flats gaging station was a small fraction of the average amount. In all years of record except 1977 and 1985, the record shows the water level in well 11C1 has remained sufficiently high to meet the present level of demand.

If conditions occur in the future which are similar to the 1976-1977 drought, and if CCSD can produce convincing evidence showing that well 11C1 would be unpumpable even in the absence of CCSD diversions, then CCSD would be free to request authorization to divert water without having to maintain a supply of water to satisfy the riparian rights served by well 11C1. Such a request could be made pursuant to Water Code Section 1425 et seq.

CCSD's next argument is that there is no "direct correlation" between the changes in low water levels in the CCSD wells and changes in the low water levels in well 11C1 for the same period of time. In response, we note that Order WR 88-14 recognizes that the heterogeneity of the water bearing material in the San Simeon alluvium may affect the amount of water available in the area upstream of the well field. In

view of the heterogeneous material in the alluvium, one would not expect to find a one-to-one (or a foot-to-foot) correlation between changes in low water levels in District wells and well 11C1. The point is that as District dry season water use increases, the record shows that water levels in well 11C1 and other wells in the basin decline.

CCSD's final argument regarding the District's alleged lack of effect on well 11C1 is that even after the well became unpumpable there was standing water in the bottom of the well. We respond that the problem with well 11C1 is not that CCSD diversions entirely dried up the well. Rather, the problem was that CCSD diversions lowered the static water level to the point where the alluvium could not provide water at the well's operable rate of pumping. Since the well bottoms in bedrock, deepening the well would not overcome this problem.

5.3. Alternative Means of Providing Water To Place of Use Served By Well 11C1

CCSD also suggests that if part d of Permit Condition 21 is retained, it should be revised to allow CCSD an additional way to supply water to well 11C1. The additional alternative which the District suggests is to "provide a physical connection from well 10A3 or other downstream Pedotti well to the place of use served by well 11C1."

Pedotti's response to this suggestion is that: (1) there is no evidence in the record regarding this proposed method of mitigation; and (2) the practical effect of using well 10A3 to serve the place of use of well 11C1 would be to reduce the amount of water available for use in the area surrounding well 10A3. Pedotti suggests, however, that he has no objection to the District using various alternative means to supply water to the area of well 11C1, provided that use of water from his other wells is not compromised in the process.

The Board agrees that there has been no showing that well 10A3 provides a feasible means of providing water to the area served by well 11C1. If well 10A3 does provide a feasible means of supplying water to well 11C1 without other adverse effects to Pedotti, the Board has no objection to proceeding in that manner. The three mitigation actions identified in part d of Condition 21 were specified based on the evidence in the record. If the District and Mr. Pedotti can agree on some other method of providing water to well 11C1 then the Board has no objection to use of such method. Part d of Condition 21 should be amended accordingly.

Finally, the District suggests that part d of Condition 21 should be amended to state that the District must maintain a supply of water to well 11C1 only when the well is rendered unusable "under reasonable methods of diversion." Since Order WR 88-14 has already found that well 11C1 provides a reasonable method of diversion, the requested revision is unnecessary and potentially confusing.

6.0 CONCLUSION

The petition for reconsideration states that the District recognizes the "soundness and necessity" of Order WR 88-14 and "accepts the restraints it imposes on the District" with two exceptions. The District's first objection concerns the definition of when the dry season diversion limitations apply. Although all parties previously agreed to the existing wording, the Board concludes that revising the definition of the dry season as discussed in Section 5.1 above will assist in maximizing the beneficial use of water in accordance with Article 10, Section 2 of the California Constitution.

The District's second objection concerns part d of Permit Condition 21. For the reasons discussed in

Section 5.2, the Board concludes that part d of Permit Condition 21 is supported by the evidence in the record. In order to allow for the broadest possible range of actions to protect the prior riparian rights in the area served by well 11C1, however, the Board concludes that part d of Condition 21 should be amended to read as specified in the order which follows.

With the exception of the changes described above, the Board concludes that Order WR 88-14 is well supported by the evidence. Consequently, the petition for reconsideration should be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. Permit Condition 5 of Permit 17287 is amended to read as follows:

> "The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. As used in this permit, "the date when surface flow ceases" refers to the date of cessation of seasonal run-off during the winter or spring months. Any question regarding the date of cessation of seasonal run-off in a particular year

shall be resolved by the Chief of the Division of Water Rights upon request of any legal user of water from San Simeon Creek. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit."

2. Part d of Permit Condition 21 of Permit 17287 (as added by Order WR 88-14) is amended to read as follows:

"d. At such time as permittee is diverting water authorized under this permit and the water level in well 11C1 reaches a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 11C1 in amounts necessary to meet the reasonable riparian needs of Pedotti and his successors in interest:

(1) Make improvements to well 11C1;

(2) Install a new well;

(3) Deliver water from its point of diversion to the riparian place of use served by well 11C1;

(4) Such other action as is mutually agreeable to the permittee and Pedotti or his successors in interest."

3. Except as modified, herein, the provisions of Order WR 88-14 are affirmed.

4. The petition for reconsideration filed by Cambria Community Services District is dismissed.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 20, 1988.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Eliseo M. Samaniego
Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marche'
Administrative Assistant to
the Board

8.17287

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 17287, Issued on Application 25002, CAMBRIA COMMUNITY SERVICES DISTRICT, Permittee, COASTAL RESIDENTS UNITED, INC., JON PEDOTTI, CLYDE WARREN, Complainants.	ORDER: WR 88-14 SOURCE: San Simeon Creek COUNTY: San Luis Obispo

ORDER AMENDING PERMIT

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 17287, Issued on Application 25002, CAMBRIA COMMUNITY SERVICES DISTRICT, Permittee, COASTAL RESIDENTS UNITED, INC., JON PEDOTTI, CLYDE WARREN, Complainants.	ORDER: WR 88- SOURCE: San Simeon Creek COUNTY: San Luis Obispo

ORDER AMENDING PERMIT

BY THE BOARD:

1.0 INTRODUCTION

The Cambria Community Services District (District or CCSD) having been issued Permit 17287 for appropriation of water from San Simeon Creek underflow on May 9, 1978; complaints having been filed alleging that the District's diversion of water has caused injury to prior rights and has been in violation of the conditions of the permit; a public hearing having been held on April 23 and 24, 1987 by the Board; permittee and complainants Coastal Residents United, Jon Pedotti and Clyde Warren having appeared and presented evidence; legal briefs and closing statements having been submitted; the evidence in the record having been duly considered; the Board finds as follows:

2.0 BACKGROUND

The Cambria Community Services District provides the water supply and wastewater treatment facilities for the community of Cambria. Historically, the community's water supply was obtained from the underflow of Santa Rosa Creek by means of extraction wells. Although the District asserts a pre-1914 right for use of Santa Rosa Creek underflow, the disputed nature of this claim led to the District filing Application 28158 for diversion from Santa Rosa Creek. A hearing has been held on Application 28158 and a Board decision is expected in the near future. In recent years, the District has relied primarily upon diversions from the underflow of San Simeon Creek under Permit 17287 which is presently before the Board.

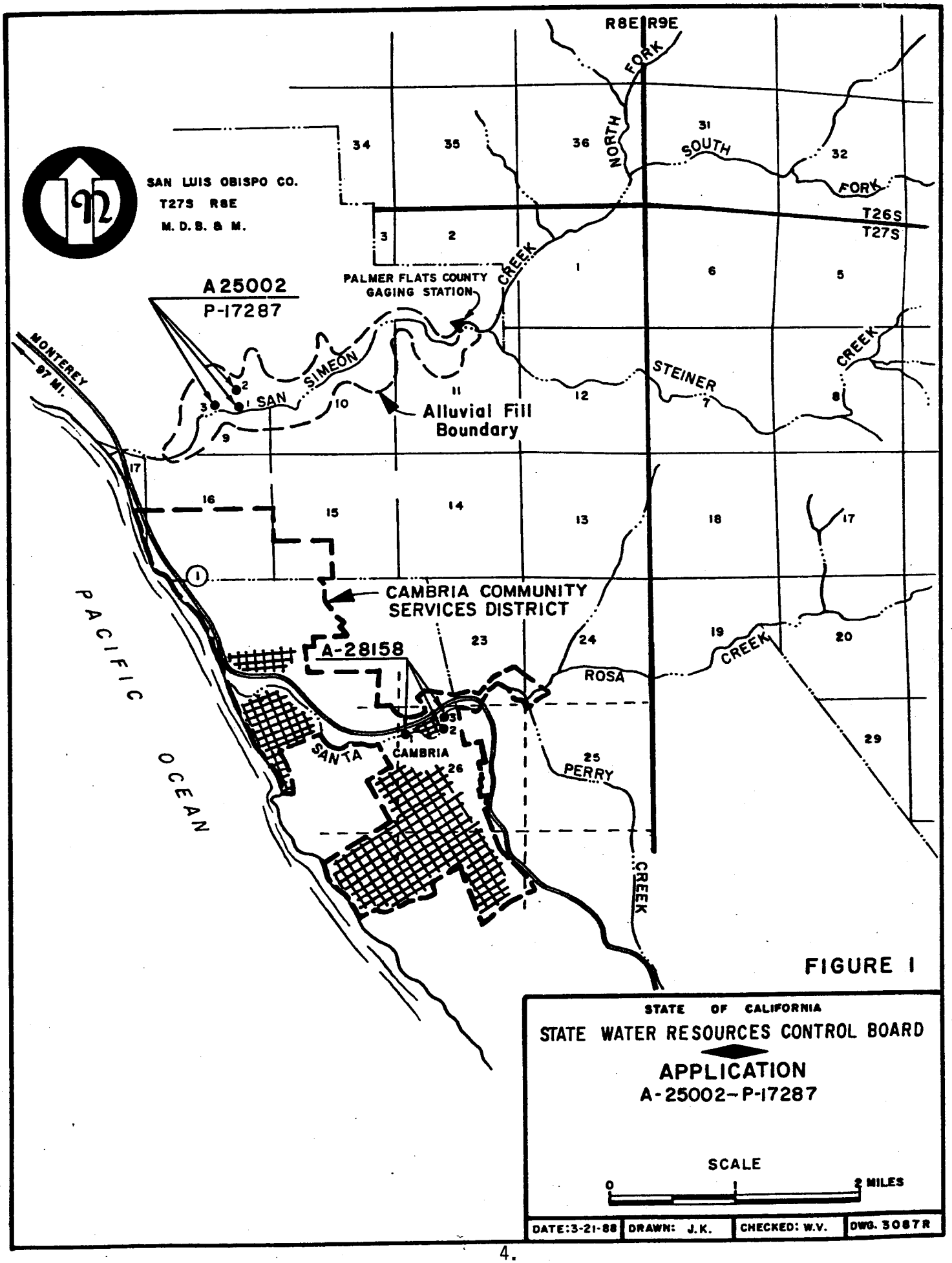
Permit 17287 was issued following approval of Application 25002 in Board Decision 1477 issued on December 15, 1977. The permit authorized diversion of water from the San Simeon Creek underflow subject to specified terms and conditions of the permit. Following issuance of Permit 17287, San Simeon Creek became the District's primary source of water with Santa Rosa Creek used as a supplemental supply.

San Simeon Creek is a seasonal stream which flows only during the wet season, the length of which varies from year to year. During the dry period, the available water supply is limited to water in channel storage with no evidence of any appreciable recharge until surface flow resumes in the area of the Palmer Flats gage. Permit 17287 authorizes direct diversion of 2.5 cubic feet per second from the San Simeon Creek underflow with the maximum amount not to exceed 1,230

acre-feet per year and no more than 572 acre-feet to be diverted during the "dry season" of July 1 to November 20. The water is diverted from extraction wells for municipal use within the boundaries of Cambria Community Services District. (Figure 1)

In the 1977 hearing on Application 25002 for diversion from San Simeon Creek underflow, the protestants included Willis Warren and Jon Pedotti who alleged that the use of water by the District would infringe upon the exercise of their riparian rights. The Board concluded that protestants Warren and Pedotti possess riparian rights to the use of underflow of San Simeon Creek on their respective riparian lands, but that their methods of diversion must be reasonable. After stating that the riparians were not entitled to the maintenance of some arbitrary water level in their wells, the Board concluded that the deepening of the riparian extraction wells or the drilling of new ones might be necessary. In particular, the Board recognized that there was a substantial possibility that the relatively shallow wells 9K1 and 10F1 of Warren and 9J1 of Pedotti would go dry during some portion of the year due to District pumping.

In determining the availability of water to the District, the Board utilized the concept of a "Maximum Well Field Drawdown Line" (MWFDL). The line was presented as a representation of the effects which District pumping were expected to have on the availability of water to other water users, assuming that a positive hydraulic gradient was maintained to the ocean. Decision 1477 indicates that the quantity of water equal to the amount of water in channel storage between the


R8E R9E
NORTH FORK
SOUTH FORK
SAN LUIS OBISPO CO.
T27S R8E
M. D. B. & M.
T26S
T27S
A 25002
P-17287
PALMER FLATS COUNTY GAGING STATION
SAN SIMEON CREEK
STEINER CREEK
MONTEREY 97 MI.
Alluvial Fill Boundary
CAMBRIA COMMUNITY SERVICES DISTRICT
A-28158
ROSA CREEK
SANTA ROSA CREEK
CAMBRIA
PERRY CREEK
PACIFIC OCEAN
FIGURE 1
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
APPLICATION
A-25002-P-17287
SCALE
0
2 MILES
DATE:3-21-88
DRAWN: J.K.
CHECKED: W.V.
DWG. 3087R

MWFDL and sea level was considered to be available to the upstream water users. This quantity was estimated to average approximately 270 acre-feet, which was sufficient for the then existing riparian uses.

Due to the uncertainty regarding the depth of the San Simeon Creek alluvium at specific well locations (particularly wells 9K1 and 10F1), the Board was unable to establish comprehensive mitigation measures for protection of prior rights. Therefore, the Board expressly reserved jurisdiction to amend or revise the terms of the CCSD permit in order to ensure the protection of vested rights and the public interest. (Decision 1477, Condition 14) Decision 1477 recognized that the total demand placed on the San Simeon Creek system, including water needed for prevention of seawater intrusion, riparian use, and the proposed CCSD use, would result in periodic shortfalls in the amount of water available to the District during prolonged dry periods. This concern was alleviated due to the assumption that the District held an adequate right to divert supplemental water from the Santa Rosa Creek underflow.

Commencing in March 1979, the District began diverting San Simeon Creek underflow and no supplemental water was needed from Santa Rosa Creek until July 1984. During this period, the lowest recorded water level at the District's San Simeon well field was about five feet above mean sea level (MSL) during October 1984. The District concluded that additional water could be extracted from the San Simeon Creek underflow during the dry period by drawing the water level down to sea level and steepening the underflow gradient to increase the yield.

The District recognized that there was a very real possibility that some of the shallower riparian wells would be adversely impacted by drawing the District's production wells down to MSL. The District did not, however, advise either of the upstream riparian diverters, Pedotti or Warren, of this possibility. (T,II,388:5-390:3) The relative locations of the key San Simeon Creek wells involved in this proceeding are shown on Figure 2.

On July 19, 1985, the District ceased pumping from Santa Rosa Creek and relied exclusively on San Simeon Creek underflow. By September 3, the water level at the well field had been lowered to just above MSL and the District cut back production from San Simeon Creek and resumed pumping supplemental water from Santa Rosa Creek. The San Simeon well field subsequently recovered to approximately three feet above MSL by the end of the dry period in late November.

During the 1985 summer season (May through October), 366 acre-feet was pumped from San Simeon underflow or an average of 61 acre-feet per month. On the basis of this yield test, the District concluded that a summer season average monthly production of 61 acre-feet from San Simeon Creek should be the basis for determining allocation of water and sewer service. (T,II,341:6-345:6; T,II,377:19-378:23)

3.0 COMPLAINTS AGAINST DIVERSIONS UNDER PERMIT 17287

In November and December 1985, complaints were filed by Jon Pedotti, Coastal Residents United (CRU) and Stanley Pearson against the

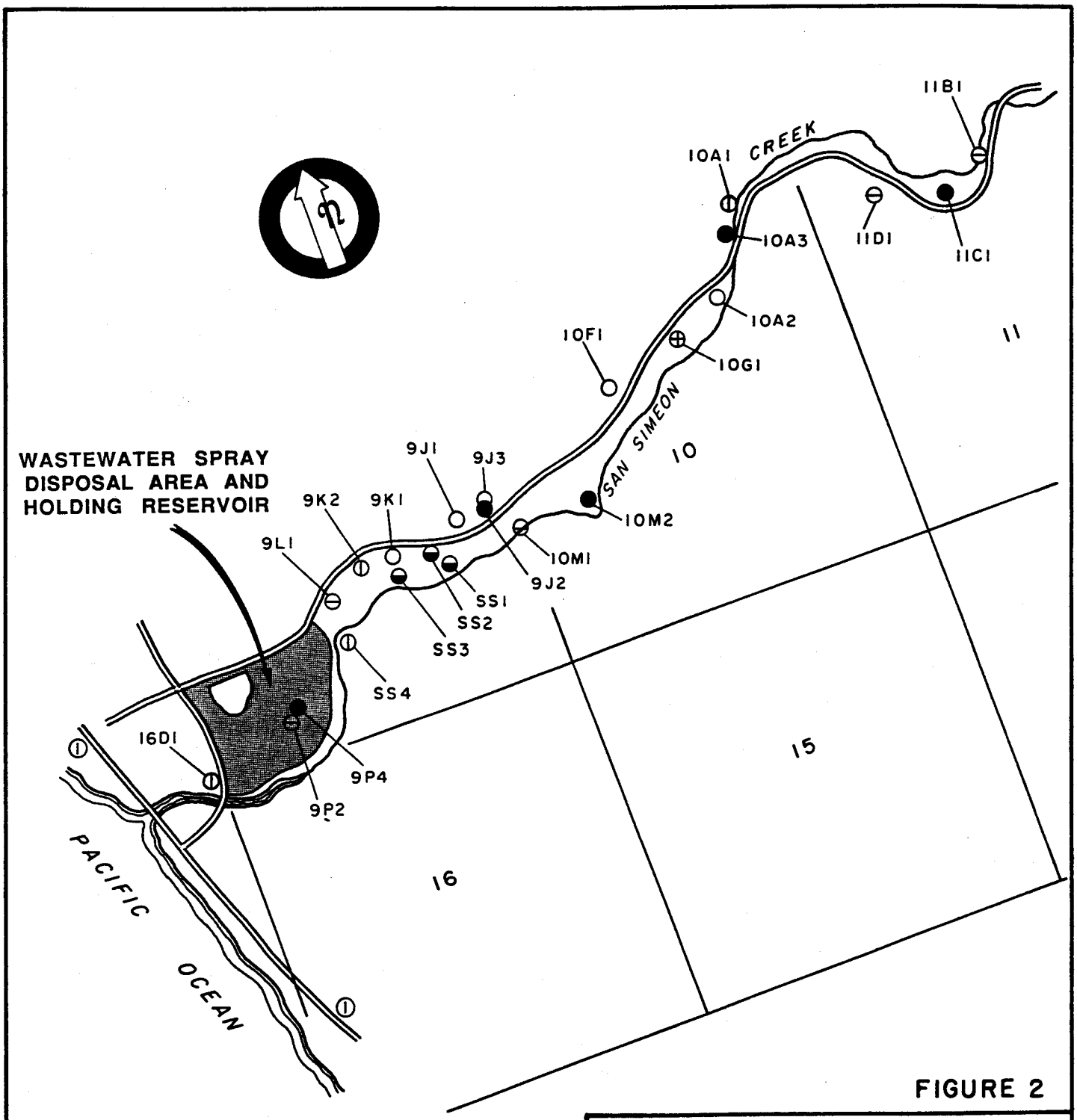


FIGURE 2

LEGEND

- DOMESTIC WELL
- OBSERVATION WELL
- IRRIGATION WELL
- INDUSTRIAL WELL
- UNUSED WELL
- CCSD PRODUCTION WELL

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

A-25002 P-17287
KEY WELL LOCATIONS
SAN SIMEON CREEK VALLEY

SCALE
0 2000 4000 FT.

DATE: 3-23-88	DRAWN: A.G	CHECKED: WV	DWG: 3087A

27044-983 8-82 OSP

District's diversion of San Simeon Creek underflow under Permit 17287. In March 1986, the District submitted an answer to these complaints but was unable to resolve the matter. In March 1987, additional complaints were received from Willis Warren and Susan Keller and from Willis Warren and Clyde Warren against the District's diversion of San Simeon Creek underflow. As a hearing had already been scheduled on the earlier complaints, the District was advised to answer the Warren and Keller complaints as part of the hearing process.

The allegations of the complaints, the evidence presented in support of the complaints, and the District's response to the complaints are summarized below. Due to the number of issues raised and the technical nature of much of the evidence, the summary of evidence set forth in this order is lengthy.

3.1 Pedotti Complaint

3.1.1 Summary of Complaint and Supporting Evidence

Jon Pedotti's complaint alleges that CCSD diversions are causing injury to his vested riparian water rights and that CCSD pumping consistently exceeds the MWFDL. Evidence regarding Pedotti's use of water, problems experienced with his wells and the relief which he requests are discussed below.

Pedotti's primary use of San Simeon Creek underflow is for irrigation of 104 acres. The first full year of irrigation was in 1975 following purchase of the property in 1973. In addition to irrigation,

approximately 40 acre-feet per year is pumped from well 10G1 for washing gravel and for use in the production of concrete. All but about 1 acre foot of this water is returned to the stream system via settling ponds. There is also a nominal use of approximately 3 acre-feet per year for domestic purposes and stockwatering. (T,I,109:21-112:2; T,I,150:21-151:20; T,I,153:16-153:24)

Following the 1976-77 drought, Pedotti switched to dry farming which significantly reduced his use of San Simeon Creek underflow. Commencing in 1982, he returned to irrigated agriculture planting sugar peas and vegetable crops. Pedotti testified that historically both he and the prior owners of his land farmed the same acreage with crops (alfalfa, permanent pasture and sugar beets) that required much more water than the crops he has been growing since 1982. (T,I,119:3-19; PEDOTTI, 1)

Table 1 summarizes the diversion of water from San Simeon Creek underflow by Pedotti since 1975 for irrigation purposes and also contains estimates of the irrigation diversions in 1959 and 1968. These latter estimates are based on land use surveys by the California Department of Water Resources and estimates of water requirements for the crops planted. (T,I,160:1-161:13; PEDOTTI Exhs. 1, 4, 4.13, 8, 9, and 10) The period May through October is generally considered as the dry period though this varies from year to year depending on the pattern and amount of precipitation.

TABLE 1

DIVERSION OF SAN SIMEON CREEK UNDERFLOW
FOR IRRIGATION PURPOSES BY PEDOTTI AND PREDECESSORS

YEAR	MAY THROUGH OCTOBER DIVERSION (acre-feet)	TOTAL ANNUAL DIVERSION (acre-feet)
1959		207
1968		221
1975		210-220
1978	12	13
1979	14	14
1980	8	8
1981	18	18
1982	89	90
1983	148	156
1984	187	213
1985	160	174
1986	166	193

Prior to the 1976-77 drought, neither Pedotti nor his predecessors experienced water shortages at any of the property's wells. In August 1976 and again in July 1977, wells 10A1 and 11B1 became unpumpable although they had standing water. In July 1977, well 10G1 also became unusable for the first time due to low water levels. In late 1977, two new and deeper wells, 10A3 and 11C1, were drilled to replace 10A1 and 11Ba. Following the drought no further water supply problems were encountered until 1984. (T,I,117:25-119:2; T,I,146:26-147:20; PEDOTTI, 2)

Beginning in late spring 1984, Pedotti experienced a lowering of the levels in all his wells and, by fall, well 9J1 was dry and well 10G1 was undependable. Following recovery during the winter months, virtually all of the Pedotti wells reached new lows in the fall of

1985. Well 9J1 went dry again and wells 10G1 and 11C1 were unpumpable. Pedotti admitted that his pumping of downstream wells has some effect on the performance of well 11C1. On the other hand, no problem was encountered with well 11C1 in 1984 which was the year of his peak irrigation usage. Except for increased pumping costs due to lower water levels, no water supply problems were encountered with the rest of his operational wells 9J2, 9J3, 10A2, 10A3 and 10M2. (T,I,119:20-120:18; T,I,141:26-142:20; T,II,405:23-406:14; PEDOTTI,1; PEDOTTI,2)

In essence, Pedotti contends that the water level problems he has encountered since 1984 are worse than during the 1976-77 drought and are the direct result of District pumping practices. In support of this contention, Pedotti points out that the flows at the Palmer Flats gage, just upstream from his property, were the lowest of record during water years 1976 and 1977. For 1976 the streamflow was 475 acre-feet and for 1977 it was 636 acre-feet. By contrast, the flow for water year 1984 was 7,363 acre-feet plus an unknown quantity due to several months of no record. Streamflow for 1985 was 6,822 acre-feet. Thus, the flow in either 1984 or 1985 was six to seven times the combined flow of 1976-1977, yet water level conditions were better during the drought. (T,I,127:7-127:22; T,I,161:17-163:11; T,1,167:24-168:3; PEDOTTI, 4.1)

Pedotti also submitted hydrographs from wells 9J2, 10G1, 10A3, 10A1, and 11C1. (PEDOTTI,4.2-4.6) These hydrographs were developed by CRU and are also are part of CRU's Exhibit 2. The hydrographs indicate

that well levels in 1984 and 1985 were as low, if not lower, than during the drought in 1977. (T,I,164:10-165:24)

Pedotti's position is that the MWFDL, as referenced in Decision 1477, is a line below which the District would, or should, not pump its wells. Based on a study of monthly well levels in the District's production wells SS1, SS2 and SS3, Pedotti concluded that the District exceeded the MWFDL for a period of about three months in 1984, three to four months in 1985 and six to seven months in 1986 through March 16, 1987. The year 1985 showed the most significant departure of District well levels from the MWFDL.

Following the 1977 Board hearing, Pedotti upgraded the pumps on wells 9J2, 10A3, and 11C1 and drilled well 10M2. In an effort to develop a dependable water supply for the gravel plant, Pedotti had a test hole drilled in February 1986 to a depth of 85 feet located about 40 feet away from well 10G1. In the opinion of expert witnesses appearing on behalf of CRU and Warren, the well log from this boring shows bedrock at 85 feet with no water producing zones below about 50 feet. (T,I,71:21-72:1; T,I,120:19-121:1; T,I,148:22-149:10; T,II,428:24-430:15; T,II,446:16-447:13; PEDOTTI, 1)

3.1.2 Relief Requested

Pedotti proposed the following alternatives for the protection of riparian rights in lieu of requiring that the District curtail pumping any time that water levels fall to the MWFDL. (T,I,170:11-173:5; T,I,186:24-189:5; PEDOTTI,4,11-14)

1. District diversion of San Simeon Creek underflow should be limited to such times as there is a live stream from the Palmer Flats gage to the ocean or, at least, only when the surface flow at the Palmer Flats gage exceeds two cubic feet per second. During the dry season, the District should divert water first from Santa Rosa Creek with San Simeon Creek as a supplemental supply. For illustrative purposes, Pedotti applied the two cubic feet per second condition to the historic surface flow at Palmer Flats for years 1975 and 1985. In 1975, the District would have had to cease pumping San Simeon underflow from July through December and, in 1985, from June through December.

- or -

2. The District should be required to cease diversion of San Simeon underflow at such time that the static water level in well 9J2 declines to 20 feet above MSL. For illustrative purposes, Pedotti applied this condition to the historic water levels in well 9J2 since April 1979. If this condition had been in effect, the District would have had to cease diversion from San Simeon Creek during the following periods:

   Mid November 1980 to mid January 1981

   Mid August to mid November 1981

   Late June to late November 1984

   August through November 1985

   August through December 1986

- or -

3. The District should be required to provide Pedotti with the quality and quantity of water that was comparable to his existing water supply. For example, during shortages, the District could deliver water to 9J2, 10M2, and 10G1. The fact that these wells would not have to be pumped may help wells 10A3 and 11C1.

- or -

4. District to pay landowners not to irrigate during critically dry periods with such payments to be equivalent to amounts they would otherwise have received.

3.2 Warren Complaints

3.2.1 Summary of Complaint and Supporting Evidence

The complaints of Willis Warren and Clyde Warren and of Willis Warren and Susan Keller (hereinafter, "Warren") allege that:

1. CCSD diversions caused well 9K1 to go dry in 1984 and to have less than one foot of water remaining in 1985 which could cause the pump to burn out;

2. CCSD diversions caused well 10F1 to go dry in 1984 and 1985, and caused water levels to drop within two to three feet of the well bottom in 1986 which could cause the pump to burn out;

3. The estimates of water availability set forth in Decision 1477 substantially exceed the actual supply in the San Simeon Creek channel storage.

Warren diverts from wells 9K1 and 10F1 under riparian right as recognized in Decision 1477. Table 2 presents a description of the Warren wells. Well 9K1 is located essentially within the District's well production field and serves the lower or downstream part of the Warren property. Well 10F1 is approximately 4000 feet upstream from CCSD well SS1 and serves the upper part of the Warren property. (T,I,198:3-10; T,I,200:24-25; T,I,204:20-205:1; CCSD,9; STAFF,1)

TABLE 2

SUMMARY OF WARREN RIPARIAN EXTRACTION WELLS
ON SAN SIMEON CREEK

WELL NO.	DEPTH	CURRENT USE	AMOUNT
9K1	32.5'	Domestic, Stock & Drip Irrigation of 2 Acres of Trees	5 afa
10F1	33'	Domestic & Stock	2 afa

As of the date of the hearing, wells 9K1 and 10F1 were used primarily to provide water for 150 head of cattle and for domestic use at six residences. Warren's primary source of irrigation water is a well which is located in the District's wastewater disposal area. This well, which is leased from the District, pumps a combination of percolated effluent and underflow from San Simeon and Van Gorden Creeks and is used to irrigate 63 acres in both the San Simeon and Van Gorden Creek watersheds. Warren's lease with the District expires in 1989 and if not renewed, this irrigation requirement of approximately 65 acre-feet per annum would have to be met from well 9K1. Warren plans to plant an additional two acres of Christmas trees which could

only be irrigated from well 9K1 or the leased well, and seven acres of vegetable crops which would have to rely on well 10F1 for irrigation. (T,I,198:3-199:12; T,I,200:17-200:20; T,II,219:8-220:25; T,II,227:12-228:17; T,II,411:16-412:14)

In Decision 1477, the Board concluded that Warren possessed a riparian right to the use of waters from the underflow of San Simeon Creek on property within the watershed of San Simeon Creek but not on property within the watershed of Van Gorden Creek. Though the matter of Warren's riparian status was not considered to be an issue in this proceeding, there was extensive testimony and cross-examination which apparently sought to confirm or question the riparian status of both well 9K1 and some of the water uses therefrom. The Board finds that the evidence presented provides no basis for reconsideration of the Board's prior conclusions regarding the riparian status of well 9K1 and associated uses. Any use of San Simeon Creek underflow on the Warren property in the Van Gorden Creek watershed, however, must be under an appropriative water right. Warren's reply brief, submitted after the hearing, acknowledges that most of the residences served by well 9K1 are in the Van Gorden Creek watershed. Warren has since filed Application 28966, which includes water for domestic use at these residences.

In support of the allegations regarding CCSD impacts on wells 9K1 and 10F1, Warren contends that prior to 1984 he had never experienced any water shortages in either well, not even during the 1976-77 drought. In June 1984, well 9K1 went dry for the first time and the rapid

decline in the water level resulted in the pump burning up. The District paid for a new pump and allowed the Warrens to connect to the District's system. In January 1985, Warren resumed use of well 9K1, but, by July, it was dry again and the District again provided the Warrens with a substitute supply. Warren contends, however, that the District will make no long-term commitment to provide a dependable water supply for riparian uses served from well 9K1. (T,I,200:21-201:23; T,I,202:4-204:1; T,I,208:6-18; T,II,228:18-231:4; WARREN,1,5)

In October 1984, well 10F1 also went dry for the first time forcing Warren to haul water for domestic and stockwatering needs. The same situation occurred again in October 1985. In November 1986, water levels were within two feet of the bottom of the well which left a small margin of safety against pump burn out. Clyde Warren testified that cessation of pumping at well 10F1 used to cause the water level to improve quickly, but this no longer happens. In 1984, the first rain caused well 10F1 to recover enough so that it could be placed back in operation. However, in 1985 the well did not recover even after the first two rains. Warren contends that this has never happened and is clearly a change for the worse from historical conditions on San Simeon Creek. (T,I,206:6-207:19; T,II,233:1-10; WARREN,1,8-10)

Warren agreed with prior testimony that the evidence (CCSD,15) showed that District diversions in 1984 and 1985 caused severe effects equivalent to that of a drought year. Warren also contends that District pumping has a drawdown effect on all upstream wells as

evidenced by the longitudinal hydrogeologic sections of San Simeon Creek. According to Warren, these sections show that District pumping has moved the base level or sea level, which controls the upstream elevation of the water table, back into the aquifer to District wells SS1 and SS2 which is the point of maximum drawdown. This has the effect of increasing the hydraulic gradient upstream of the District's well production field. Warren concludes that the result of moving the base level to the well production field is a complete and quicker draining of the upper aquifer. (T,II,418:10-422:10; T,II,426:16-427:18; CCSD,10-11-12)

Warren's second allegation disputes the findings of Decision 1477 regarding the amount of water available, during the dry season, from the underflow and channel storage of San Simeon Creek. Warren contends that District diversions should be based on a safe yield which would allow for at least two years of sustained drought rather than assuming that channel storage will be replenished each year from the wet season runoff. This argument is based on the limited size of the San Simeon basin, the low water levels experienced during the 1976-77 drought with no District pumping and the fact that the District is apparently intending to draw the underflow to MSL during the dry season with no allowance for carry over storage.

For purposes of estimating a safe yield, Warren used the District's San Simeon monthly production totals for 1984 during which well levels were sustained at approximately the MWFDL. Production in June was 65.4 acre-feet with a continuing decline to 30.7 acre-feet in

October. Under the assumption that the dry season would have continued for six more months, Warren extrapolated that monthly production would have declined to about 20 acre-feet. He thus concluded that given two years sustained drought, the dry period safe yield for the District would be a maximum of about 25 acre-feet per month, not the 61 acre-feet which the District averaged in its yield test program.

After well 9K1 went dry in July 1985, Warren had three test borings drilled, one 15 feet toward the creek from well 9K1, one 20 feet south of well 10F1, and the other at a new site above well 10F1. The boring near well 9K1 hit hardpan at 37 feet and the drilling rig was unable to penetrate more than an additional 5 feet. The boring near well 10F1 showed the possibility of deepening the well by about 10 feet. The boring at the new site above well 10F1 was drilled to a depth of 85 feet where drilling was terminated as, according to Warren, non-water bearing material was being encountered. Warren contends that the driller's log for this boring shows the water bearing formation ending at no deeper than 46 feet. Nevertheless, Warren is of the opinion that this location should be a better source of water than well 10F1 and has applied to the Coastal Commission for a permit to drill a well at this site. (T,I,201:23-201:26; T,I,204:5-10; T,I,205:4-13; T,II,224:13-227:11; T,II,233:11-235:24; T,II,239:5-18)

3.2.2 Relief Requested

Warren's opening brief and reply brief filed after the hearing proposed several alternatives for protecting his riparian rights

against infringement by CCSD or for compensating him for any losses which occur as the result of such infringement. These alternatives are summarized as follows:

1. The Board should protect the use of water from the riparian's wells by limiting CCSD diversions from San Simeon underflow to 30 acre-feet per month during the dry period coupled with adherence to the MWFDL; or

2. The Board should require CCSD to compensate riparian property owners for damages it has caused; or

3. The Board should require CCSD to arrange for a full and adequate alternate water supply for riparian uses.

Warren also requested that the Board retain jurisdiction in the matter of Permit 17287.

3.3 Complaints of Coastal Residents United (CRU) and Stanley Pearson

3.3.1 Summary of Complaint and Supporting Evidence

The identical complaints of Coastal Residents United and Stanley Pearson allege the following:

1. CCSD has knowingly and consistently pumped production well levels to near sea level resulting in dynamic cones of depression drawing water six to ten feet below sea level.

2. CCSD has knowingly and deliberately pumped production well levels consistently below the maximum drawdown line specified in Decision 1477.

3. CCSD has misappropriated upper riparian landowner's water in violation of their vested rights.

4. CCSD has failed entirely or in part to implement required and claimed conservation measures regarding low-flow toilets, pressure reducing devices, water dams, and public information regarding conservation measures and drought resistant plants.

5. CCSD has violated paragraph 15 "Standard Provisions and Reporting Requirements" of its permit on numerous occasions in waste discharge control as mandated by the California Water Quality Control Board (Central Coast Region). These violations include, but are not limited to: (a) at least 15 times in 1984 when large amounts of solids were discharged to the holding ponds and then to the spray field, and (b) continuing excessive waste water levels of sodium, sulfate, chloride, and total filterable residue (TFR) in discharge.

By letter of March 6, 1987, Stanley Pearson advised that he would not appear at the hearing but that the testimony of CRU would reflect his position. The main thrust of CRU's evidentiary presentation was that District pumping is causing a reverse gradient from the wastewater disposal area to the production well field and causing a progressive annual decline in the available channel storage at the end of the wet season. (T,I,47:4-26)

With regard to the first two allegations concerning excessive pumping from District production wells, CRU appears to rely on a series of

hydrographs (water level measurements) from well 16D1 upstream to well SS1 covering the period from December 29, 1978 to March 16, 1987. (CRU,9) Commencing in 1982, the District started to measure well levels after a two hour shut down, i.e., on the basis of static levels. CRU contends that the difference between static and dynamic levels is at least 5 feet with the result that the district is drawing the dynamic, i.e., pumping level, to below sea level during the latter part of the dry season in its production wells SS1, SS2, and SS3. Thus, it is CRU's position that the District has pumped production well levels consistently below the MWFDL in Decision 1477 and further, that the water level measurements of the District since 1982 are an improper representation of the water levels in the production well field associated with District pumping. It is CRU's contention that the MWFDL is a part of Decision 1477 and as such is a part of Permit 17287 even though it is not included as a term of the permit. (T,I,37:8-42:13; T,I,94:3-21)

CRU's third allegation, regarding District infringement on riparian rights, concerns an issue which the riparian water users have standing to raise and have in fact raised. Absent a showing of facts establishing CRU's standing to raise issues on behalf of the riparian water users, the Board will not address the particular arguments raised by CRU on this issue. To the extent that evidence presented by CRU regarding hydrology and water use in the San Simeon Creek basin is relevant to any issue before the Board, however, such evidence will be considered. In this regard, the Board notes that CRU submitted a series of hydrographs from wells 9J2, 10G1, 10A3, 10A1 and 11C1 which

are located upstream of the District's wells. (CRU,2) For the most part, these hydrographs show that only in the summer of 1984 and 1985 did the water level in these wells decline to the August 1977 drought levels.

On a related matter CRU contends that Figure 2 of CRU Exhibit 5 shows that after the District commenced pumping in 1979 there has been a significant statistical regression with time on the water level in well 9L1. The major conclusion which CRU suggests is that the hydrologic balance of the lower basin has been significantly impacted by District extraction at less than 45 percent of the permitted dry season withdrawal of 572 acre-feet. CRU further argues that its evidence shows that the channel's capacity to recharge is being exceeded by the District's increasing winter pumping rate and that the maximum water level achieved within the wet season has progressively declined to a greater degree each year. In support of this argument, CRU submitted into evidence statistical analyses (CRU,2; CRU,3) but offered no supporting testimony.

CRU presented no evidence in support of its allegation regarding a lack of water conservation efforts by the District. Therefore, the alleged lack of conservation efforts is not considered to be an issue. (T,II,362:6-24) In any event, since about 1980, the Board has been requiring the preparation and implementation of water conservation and management programs as a condition of new or amended permits for municipal water suppliers (Standard Permit Term 29).

With regard to CRU's allegations regarding violation of water quality requirements, the Board takes official notice of the fact that following a hearing on May 8, 1987, the Regional Board adopted Order 87-62 approving re-issuance of the District's NPDES permit. On May 28, 1987 CRU filed a petition with the State Board appealing Order 87-62 on the grounds that the Regional Board, among other matters, declined to act to require maintenance of District production well levels sufficiently above sea level to preclude backflow of effluent from the downstream wastewater disposal area into the production well field. This matter was brought before the State Board for a determination following an evaluation by the Division of Water Quality. Board Order WQ 88-6 entered on June 16, 1988, addressed the issue of the reverse gradient from the effluent spray area and remanded the matter to the Regional Board for appropriate action. Therefore, there is no need for further consideration of the issue of reverse gradient from the wastewater disposal area as a part of this proceeding.

3.3.2 Relief Requested

CRU recommended that the Maximum Well Field Drawdown Line should be enforced as a limitation on District pumping with measurements based on dynamic pumping levels rather than the two-hour shut-in measurement. (T,I,47:18-48:8) CRU also contends that dry season diversions by CCSD must be less than 250 acre-feet in order to comply with conditions of Permit 17287. (T,I,36:18-37:4; T,I,76:4-76:9)

4.0 PERMITTEE'S RESPONSE TO COMPLAINTS

In response to the complaints of Pedotti, Warren, and CRU, the District maintains that it has not unreasonably interfered with the riparian rights of Pedotti or Warren, that it is operating within the terms and conditions of Permit 17287 and that the MWFDL is not a restriction upon its diversion and use of water. The District further maintains that additional water is available to the riparians during the dry period provided they improve their method of diversion and that to do so is a reasonable burden as it will minimize the amount of underflow which flows to the ocean unused.

The MWFDL originally was developed by CCSD for the 1977 water right hearing on Application 25002. The District contends that the primary purpose of this line was to show the maximum drawdown, or lowest levels in upstream wells, that District pumping could create. The downstream end of the line was determined to be the intersection of MSL and the assumed center of the District's well production field. This was based on the presumed limitation that CCSD pumping would not lower the static water levels in the production field below MSL. The upstream end of the line was the lowest water level of record (August 1977) in well 10F1. Thus, the MWFDL was developed on the assumption that the effects of CCSD pumping would not extend beyond well 10F1. Inasmuch as the MWFDL was a hypothetical representation based on the effects of CCSD pumping only, the District contends that the diversions of Pedotti and Warren can cause water levels to drop below the MWFDL. The District also argues that the drawdown caused by CCSD pumping decreases with distance from the production wells and that as

one moves upstream, water levels are more influenced by streamflow conditions, length of the dry period and the pumping of irrigation wells.

The District did not respond directly to CRU's contention that CCSD pumping is causing a progressive annual decline in the maximum level of wet season recharge in the underflow of San Simeon Creek. Rather, the District presented a series of hydrographs showing water level measurements from approximately 1977 through early 1987 in wells between well 16D1 upstream to well 11B1. (CCSD,15) The District maintains that the water levels in these 17 wells show recovery to the stream channel virtually every year and also show a constancy, on the long term, for winter/spring measurements with the possible exception of well 10A1. (T,II,249:4-265:21)

The District takes issue with CRU's contention that measuring wells under static conditions is an improper representation of water levels in the channel alluvium with a resultant bias of the hydraulic gradient. The District argues that the pumping or dynamic level in a well will be lower than the water level in the alluvium adjacent to the well due to well efficiency or well losses, the more efficient a well, the less the difference. Therefore, the District's evaluation of hydraulic gradients in the channel alluvium is based upon static measurements. The District concurs with CRU and Warren, however, that CCSD pumping steepens the hydraulic gradient provided that other upstream wells are not being pumped. The District also agrees that if the gradient is steepened, there will be an increase in the amount of

underflow moving toward the well production field from upstream locations. (T,II,269:9-270:17; T,II,291:23-293:17; T,II,329:21-330:24)

With regard to the amount of water available during the dry period, the District contends that the operating results from 1985 and 1986 confirm the original estimates of roughly 540 acre-feet above the MWFDL. The District also maintains that there is an additional 300 to 350 acre-feet below the line but above MSL. (T,II,285:13-287:9)

The District concludes that it has not unreasonably interfered with the rights of Pedotti and Warren; that the practical limit for CCSD pumping is MSL, because to maintain a higher level at its well field for the benefit of Pedotti and Warren, would result in waste to the ocean; and that all water reaching CCSD wells must have first been available to upstream diverters. (T,II,276:11-23; T,II,344:26-345:6; T,II,348:9-350:7)

With the apparent exception of well 9K1, it is the District's opinion that some of the water level and well production problems experienced by Pedotti and Warren could be better addressed if they were approached "more scientifically". The District recommends that the relocation of problems wells be based on either geophysical studies or the recommendations of a geologist and that the drilling of test holes include methods to determine water production. (T,II,280:5-19; T,II,311:7-17; T,II,328:11-19)

The District offered the following suggestions of what has or can be done to resolve problems at specific wells which have experienced problems.

1. Warren Well 9K1: This well is essentially within the CCSD well field. Since it first went dry in the summer of 1984, the District has been providing a substitute water supply at Warren's request. The District recognizes that the pumping of its production wells has adversely impacted this relatively shallow well and is apparently agreeable to providing an alternate water supply for well 9K1 when needed. The District is considering entering into a written agreement with Warren to this effect but is concerned that some of the alternate supply will be used on non-riparian land. (T,II,350:8-354:26; T,II,378:24-381:25)

2. Pedotti Well 9J1: The District recognizes that the pumping of its production wells has also adversely impacted this very shallow well and will cause it to be out of water on a frequent basis. The District points out, however, that Pedotti has water available to him from other nearby wells (9J2 and 9J3) and, thus, the District does not consider the impact of CCSD pumping on well 9J1 to be unreasonable. (T,II,357:16-358:7)

3. Warren Well 10F1: The District recognizes that District pumping, under full yield, at least contributed to the problems experienced with this relatively shallow well since 1984. Due to its distance upstream from the CCSD well field, however, it is the District's position that the pumping of other wells also

influences water levels in well 10F1. The District maintains that it is Warren's responsibility to either deepen or drill a new replacement well. If a dependable water supply still cannot be achieved, then the District represented that it would "work with" Warren. (T,II,355:1-356:1; T,II,356:20-357:15; T,II,381:26-382:9)

4. Pedotti Well 10G1: The District claims that Pedotti never advised them that there was an unsolvable problem with well 10G1 and that none of the water level records indicated that the well was dry or going close to dry. However, well 10G1 apparently becomes unpumpable when there is about 23 feet or less of water in the well. The District recommends that the turbine pump be replaced with a submersible pump so the pump intake could be lowered, or, as an alternative, that Pedotti drill a new well. The District suggested that there are probably other more geologically favorable places to drill a new well in that area but the District offered no evidence in this regard. (T,I,125:11-126:3; T,II,266:7-268:1; T,II,358:8-359:1)

5. Pedotti Well 11C1: The District also claims that Pedotti never advised them of problems with well 11C1. Nevertheless, the problem with this well appears similar to that of well 10G1. In this case, well 11C1 was unpumpable in the fall of 1985 even though there was 40 feet to 45 feet of water in the well. The District presented no evidence regarding suggested improvements to well 11C1. (T,I,106:11-107:1; T,I,141:1-14; T,II,359:2-360:5; CRU,2)

5.0 ANALYSIS OF ISSUES RAISED BY COMPLAINTS

The key issue is the extent to which CCSD diversions of San Simeon Creek underflow, under Permit 17287, have caused injury to the riparian rights of Pedotti and Warren. Related issues include the significance of the MWFDL; the amount of water available during the dry period; use of static vs. dynamic water levels; the extent to which CCSD diversions are causing a progressive annual decline in channel storage at the end of the wet season; and the extent to which CCSD diversions are causing a reverse gradient from the waste water disposal area to the production well field. For reasons discussed in Section 3.3.1, the issue of reverse gradient will not be addressed in this proceeding.

Based on the hearing record, as summarized in Sections 3.0 through 4.0, it is apparent that District diversions from the underflow of San Simeon Creek have steepened the hydraulic gradient of the underflow and reduced the amount of water available to Pedotti and Warren at their existing wells during the dry period. Furthermore, the evidence shows that CCSD diversions have caused, or at least contributed to, the drying up of wells 9J1, 9K1, and 10F1 in the summer or fall of 1984 and 1985. As discussed below, the evidence also shows that CCSD diversions have contributed to the pumping problems at wells 10G1 and 11C1.

The District's brief argues that the Board should apply the general principle that an upstream user has no basis of complaining about uses made downstream. The principle cited by the District applies in most

cases of surface flow diversions where diversion of water downstream ordinarily has no effect upon availability of water to upstream users. In instances where it appears the downstream diversions could affect exercise of prior rights upstream, however, the Board considers whether the downstream project will in fact infringe upon the exercise of prior rights. One such example would be a downstream diversion or storage dam which submerges an upstream diversion works and thereby interferes with exercise of the prior right upstream. In this instance, there is ample evidence that District diversions have impacted the availability of water to Pedotti and Warren and the Board must consider whether these adverse impacts constitute an infringement upon the reasonable exercise of their senior rights.

In Decision 1477, the Board recognized that at least some of the adverse effects described above would probably happen. The Board also found that Pedotti and Warren were required to utilize reasonable methods of diversion and that the riparians may be required to incur the expense of deepening their wells or drilling new ones. In the event wells could not be deepened or relocated, the Board reserved jurisdiction to consider appropriate action. The reasonableness of Pedotti's and Warren's methods of diversion and their efforts at improving the same, as well as the related issues raised by the complaints, are addressed in the following sections.

5.1 Maximum Well Field Drawdown Line, Water Levels, and Water Level Gradients

CRU and Pedotti contend that the MWFDL is a limitation on District diversions and that the District consistently has pumped production

well levels below this line. The District maintains that the MWFDL is not a restriction on diversions under its permit and that the purpose of the line was to illustrate the maximum expected drawdown in upstream wells attributable to CCSD pumping only.

The Board concludes that the record supports the District's position. As noted in Section 3.3.1, the MWFDL was not included as a limitation on District diversions in Permit 17287. It was discussed in Decision 1477 primarily for purposes of illustrating the resulting upstream water level at maximum well field drawdown by the District and for purposes of estimating the amount of water in channel storage which would be available only to upstream diverters. Furthermore, the Board recognized that the cone of depression, or dynamic level, surrounding each production well of the District would be deeper than the MWFDL. This line was not referenced or otherwise included in the Order part of Decision 1477, and it is the Order which sets forth the terms and conditions applicable to the District's water right permit. (STAFF,5,Finding 14; STAFF, 5, Order)

Inasmuch as this theoretical line was developed based on District pumping only, it is logical to conclude that diversions by Pedotti and Warren can cause upstream water levels to drop below the line. Therefore, the MWFDL is an inappropriate criterion for placing any limits on CCSD diversions.

In addition, as the District points out, the MWFDL was projected from the assumed center of the well field before any of the production wells had been drilled. Based on locations where the production wells

were ultimately drilled, the intersection of the actual MWFDL and MSL is about 1,000 feet easterly, or upstream, of where it was originally drawn. (CCSD,17, 1977 Hearing) The impact of "moving" the downstream end of the line to production wells SS1 and SS2 is to cause water levels in upstream wells to be lower than projected based on the original MWFDL location. The theoretical effect of this additional lowering of the upstream water levels, due to CCSD pumping, is estimated at approximately seven feet at well 9J3 decreasing to an additional lowering of approximately two feet at well 10A3, based on scaling from CCSD Exhibit 17 from the 1977 hearing. (STAFF,4) It is important to note, however, that the MWFDL is only a geometric approximation of the effect of CCSD pumping on upstream water levels.

Both CRU and Warren claim that CCSD pumping has a draining effect on the upper basin and Warren further contends that moving the base level of the MWFDL to the well production field causes a quicker and complete draining of the upper aquifer. However, the evidence shows that despite increased pumping by the District, at no time have wells 10M2, 10A2 or 10A3 gone dry or become unpumpable. Moving the base of the MWFDL to the CCSD production field does cause a steepening of the hydraulic gradient and thus an increase in underflow from the upper basin. This increase, however, appears to be insignificant. Assuming a hydraulic conductivity in the range of 10^{2} to 10^{-7} feet per day and porosity in the range of 20 percent to 55 percent, the increase in flow rate would range from 0.115 to 4×10^{-10} feet per day. Thus, over a 6-month period, this gradient increase, due to CCSD pumping, would cause the point at which the alluvium dries out to retreat downstream up to an additional 20 feet to 25 feet.

With respect to the issue of static vs. dynamic conditions for measurement of water levels in the channel alluvium, the Board finds that there is no evidence in the record to support the position that measurement of water levels under dynamic conditions is more representative of the water levels in the channel alluvium than measurements under static conditions. As the District points out, the pumping level in a well will be lower than the water level in the surrounding alluvium due to the effect of well pumping. Furthermore, once pumping ceases, the water level in the well and the cone of depression in the adjacent alluvium will recover to the regional, or static, water level elevation in the vicinity of the well, unless influenced by the pumping of another nearby well. Based on the longitudinal hydrogeologic sections (CCSD,10-11-12), it appears that the measurements of wells SS1, SS2, and SS3 represent water levels under neither static nor pumping level conditions but rather somewhere in between. These CCSD production wells, for the most part, are pumped continuously, either individually or in combination.

In summary, the Board concludes that static water levels provide a more representative indication of water levels in the alluvium and that, as a general matter, the District well field may be pumped down to MSL. District pumping must also comply, however, with any conditions the State Board or Regional Board may impose relative to the issue of regulating a reverse gradient as necessary for water quality purposes. District pumping is subject to further restrictions as necessary to prevent injury to the reasonable exercise of Pedotti's and Warren's riparian rights as discussed in Section 5.5 below.

5.2 Length of Dry Period Restrictions on Permit 17287

There is no disagreement among the parties to this proceeding that the length of the dry period, or period of no streamflow, is critical to the availability of water from the underflow of San Simeon Creek. In Decision 1477, the Board assumed an average dry period of July 1 to November 20 for purposes of limiting CCSD diversions to the estimated available supply in channel storage. This assumed dry period was based on only about five years of flow records which are all that were available in 1977. The Board recognized, however, that the dry season in dry years may be longer and may occur during a different period.

Pedotti and the District agree that the Decision 1477 dry period of 143 days is too short considering the additional flow records from the Palmer Flats gage since the 1977 hearing. For its own operational purposes and calculations of available supply, the District uses May through October as the dry period or summer season. (T,I,165:25-166:19; T,II,302:17-303:5; T,II,344:6-15; STAFF,5)

Based on a review of the flow records at the Palmer Flats gage from October 1970 through September 1986, the Board concludes that the average dry period, for these 16 years of record, is approximately 170 days per year. This includes a reasonable estimate as to flow conditions for those months with partial or no records. The length of the dry period does vary from year to year but generally falls within the May/June to October/November months. Figure 3 is a bar chart of the mean monthly flow at Palmer Flats for the 1970-86 period of record. For the most part, this record indicates that the mean

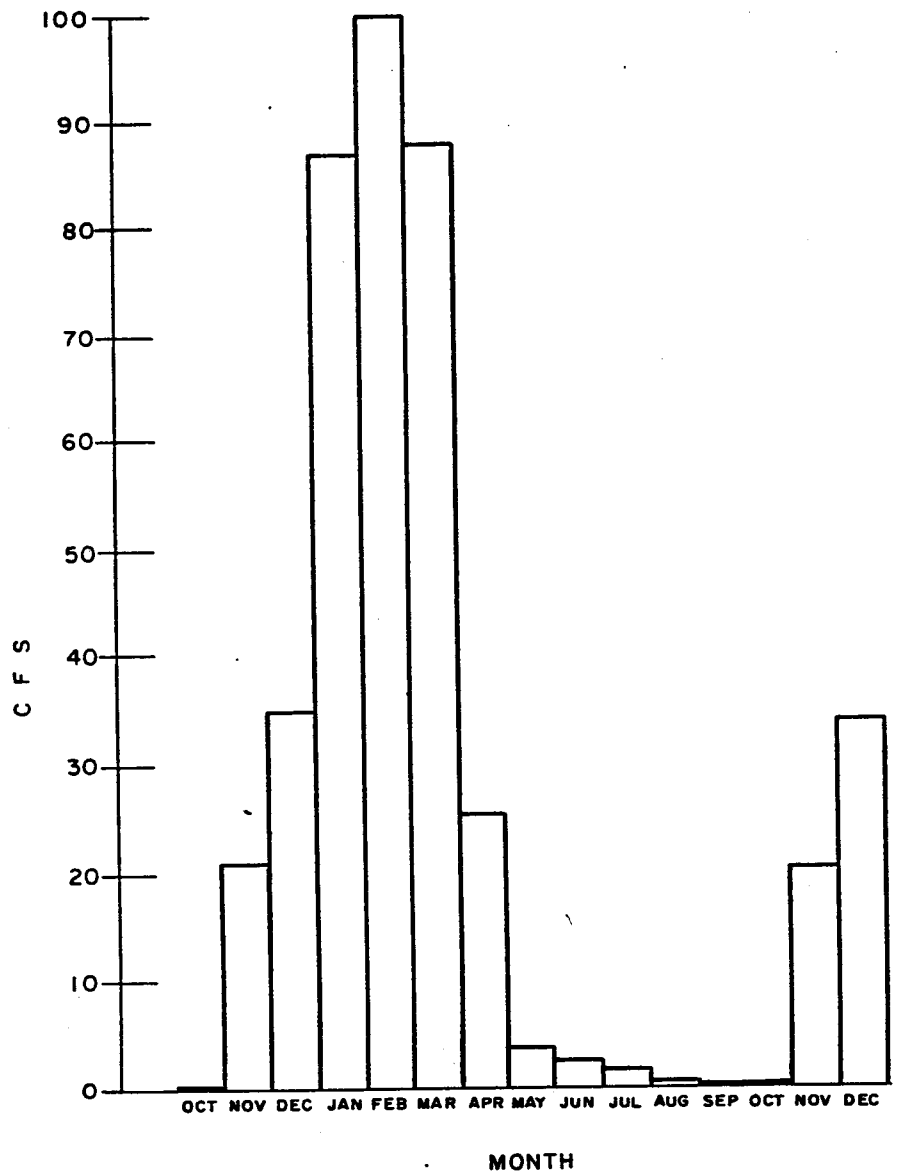


FIGURE 3

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

A-25002 P-17287
Mean Monthly Flow at Palmer Flats Gage
San Simeon Creek
Oct. 1970 - Sept. 1986

DATE: 4-23-88	DRAWN: A.G.	CHECKED: WV	DWG: 3087 A

27044-983 8-82 OSP

monthly flow from May through August is influenced primarily by wet to very wet years. (CCSD,8)

The present dry period diversion limitation in Permit 17287 is from July 1-November 20. The Board concludes that the dry period diversion limitation should be revised to begin at such time as there is a cessation of surface flow at Palmer Flats any time after January 1 of each year. The dry period diversion limitation should extend through October 31. Inasmuch as there is a physical limit as to the amount of water available to CCSD during the dry period, as discussed in Section 5.3, there is no need to impose a similar restriction should the dry period extend beyond October 31.

5.3 Availability and Use of Channel Storage

In Decision 1477, the Board found that the total San Simeon Creek supply available during the dry period is, on the average about 906 acre-feet as follows:

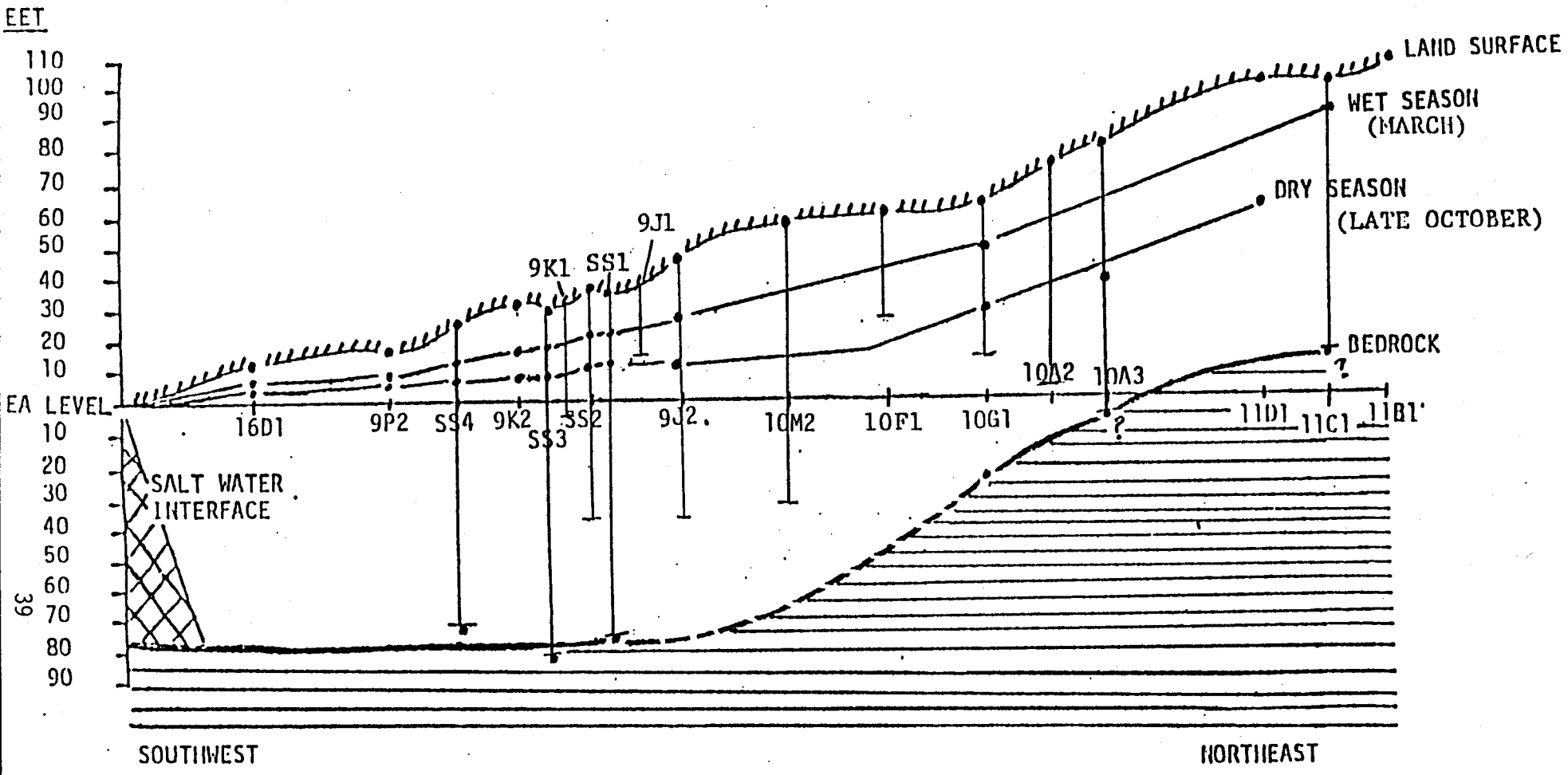
56	acre-feet Natural Underflow
576	acre-feet Storage Above MWFDL
274	acre-feet Channel Storage Between MWFDL and MSL
906	acre-feet total

The determination was based on very limited geological and hydrological data. The only new evidence available on the subsurface geology and hydrogeology of San Simeon Creek consists of water level

measurements since 1978, the District's yield test in 1985, the staff field inspection report of August 1987 and additional well logs. These logs have limited geological descriptions, virtually no hydrogeologic descriptions and no step drawdown testing. (STAFF,13; STAFF,14; PEDOTTI,11)

Figure 4 represents a longitudinal section of San Simeon Creek. The base of the alluvium has been extrapolated from available well log information. For the most part, the underlying bedrock configuration appears to follow surface topography. The two water levels represent the average wet season and end of the dry season. (CCSD,13; CRU,2; CRU,3) As can be seen from Figure 4, the typical water level during the latter part of the dry season roughly parallels the underlying bedrock contours. The staff field inspection of August 1987 (STAFF,14) verified the steepening of the water table slope northeast of well 10F1. It appears that the corresponding slope of the water table extends northeasterly as the lower basin is pumped.

Evidence from available well logs indicates that the channel alluvium is not homogeneous. Consequently, calculation of the quantity of water available from channel storage is not possible without a comprehensive hydrologic study. The differing slope of the water levels between the upper and lower reaches of the alluvium further complicates approximations of water availability. (STAFF,13; PEDOTTI,1) In summary, the underflow characteristics of San Simeon Creek, including alluvial depth, lateral boundaries, flow parameters and the extent and effect of heterogeneities are still not well defined.



SCALE

ONE MILE

FIGURE 4

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

A-25002 P-17287
Longitudinal Section of
San Simeon Creek

Table 3 provides an annual tabulation of the combined May-October diversions from San Simeon Creek underflow by CCSD for municipal purposes and by Pedotti for irrigation. The nominal domestic and stockwatering diversions of Pedotti and Warren and the non-consumptive use at the gravel plant are not included. There are no other diversions of any significance in the San Simeon Creek watershed upstream of the CCSD well field. Warren's primary source of irrigation water is a well in the wastewater disposal area. (T,I,139:12-25; T,I,168:4-6; T,II,236:20-237:7; CCSD,5; CCSD,8; PEDOTTI,4.13)

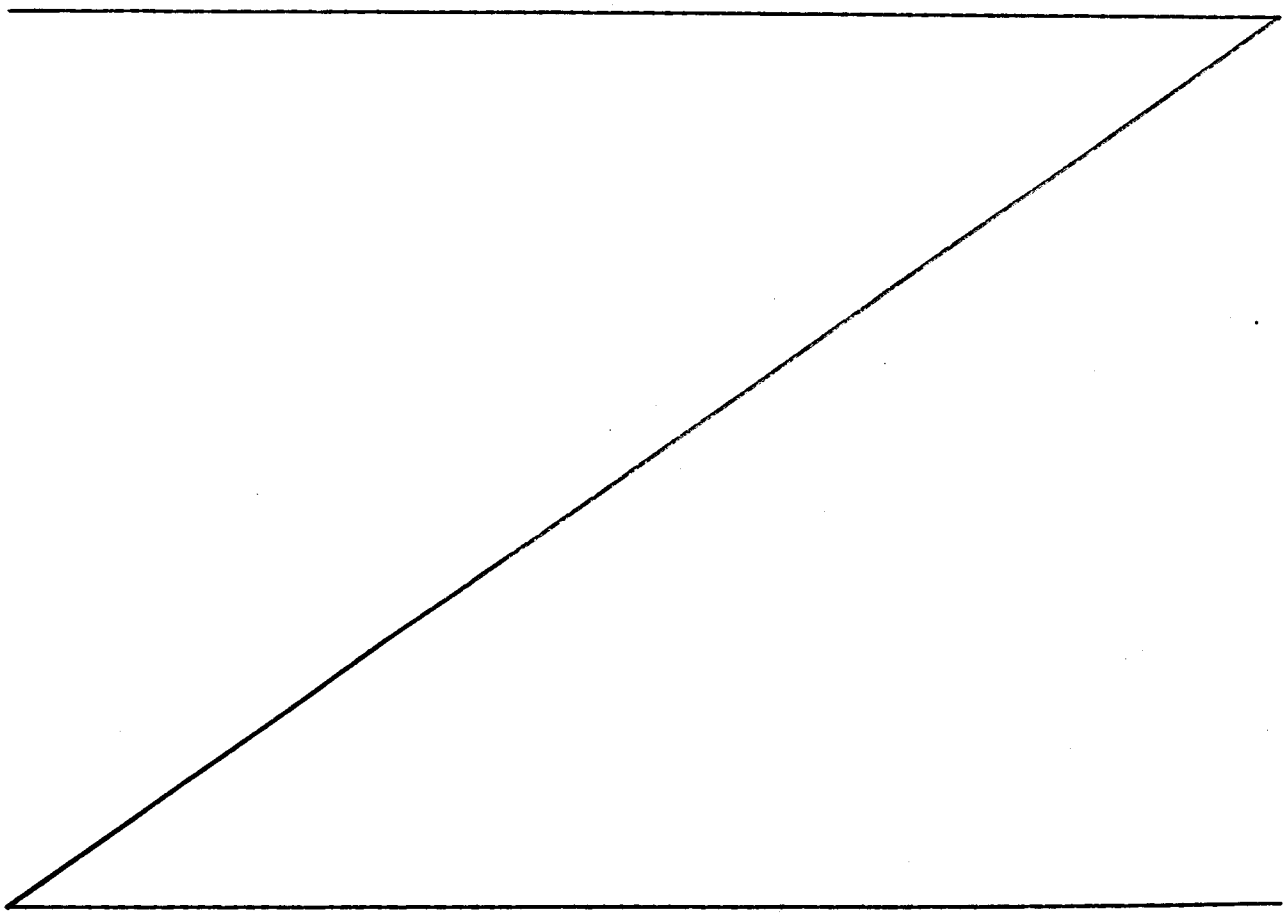


TABLE 3

SAN SIMEON CREEK
RECORDED FLOWS AND DRY PERIOD DIVERSIONS

YEAR	FLOW AT PALMER FLATS IN ACRE-FEET (Water Year)	DAYS OF NO FLOW AT PALMER FLATS (Calendar Year)	MAY-OCTOBER DIVERSIONS IN ACRE-FEET		
			PEDOTTI IRRIG.	CCSD MUNICIPAL	TOTAL
1971	16,341	174			
1972	6,782	195			
1973	32,719	111			
1974	25,524	148			
1975	13,115	160			
1976	475	316			
1977	636	309			
1978	40,052	60E			
1979	11,511+	159	14	263	277
1980	22,084+	160	8	271	279
1981	6,469	172	18	309	327
1982	24,160	107	89	305	394
1983	39,348+	35E	148	340	488
1984	7,363+	250E	187	302	489
1985	6,822	165	160	366	526
1986	26,542		166	369	535
Mean For 1971-86	17,500+	170±			

E = Estimated

As can be seen from Table 3, the total dry period diversions from San Simeon Creek channel storage have almost doubled between 1979 and 1986 and have approached the amount of water which was estimated to be above the MWFDL. The District contends that this confirms the 1977 estimates and that there still remains at least 300 acre-feet below the MWFDL which is only available to the upstream riparians. (T,II,285:13-286:8; T,II,297:21-298:10; T,II,327:17-24)

When the District first contemplated the yield test, their intent was not only to draw the water table to MSL in the well field, but also to then stabilize extraction at 60 acre-feet per month. This was not possible, however, due to the diversion of water under upstream riparian rights. Furthermore, the only circumstances identified by the District under which it would be possible for the District to withdraw the permitted dry season amount of 572 acre-feet would be for Pedotti to return to dry farming. (T,II,298:11-15; CCSD,5; PEDOTTI,7)

Warren's contention that the amount of water found to be available in Decision 1477 is substantially more than the actual supply is based on the premise that there should be carry-over storage for at least a two-year sustained drought similar to 1976-77. During the 1976 and 1977 drought years, the total flow at Palmer Flats averaged about 3 percent of the 16-year mean. To reduce CCSD's dry season appropriation to Warren's estimated safe yield would result in less than full utilization of the available water supply in all but the driest years. Unlike surface storage, which can be retained behind a dam, there is no control over the natural flow of channel storage past the CCSD well field. In essence, the issue regarding the quantity of water available to CCSD during the dry season concerns the amount available to CCSD in a normal year. Primary responsibility for allocation and management of that supply lies with the District.

Nevertheless, Warren's point is well taken and it seems only prudent that CCSD would have an emergency plan to cope with a drought year or successive drought years. However, there is no evidence in the record

that such a plan has been prepared. In addition, CCSD has not even estimated the amount of water which would be available at its San Simeon Creek well field in the event of a sustained drought similar to 1976-77. (T,II,323:21-325:13; T,II,326:18-24)

CRU's evidence that the maximum water level achieved within the wet season has progressively declined to a greater degree each year due to CCSD's pumping is based primarily on a regression analysis of four wells, 9J3, 10A1, 10A2, and 11C1. (CRU,3) No substantiating testimony was offered regarding this analysis. The period selected was from 1978 through 1985. As can be seen from Table 3, 1978 was a year of relatively high runoff at Palmer Flats and 1985 was a year of relatively low runoff. CRU Exhibit 3 was not updated to include 1986 which was also a year of relatively high runoff. The singular measurement used by CRU as the high level in a well for a given year appears to be based on monthly measurements by CCSD. There is no indication that these measurements represent the maximum water level for a particular year, even for well 10A1 which has a continuous recorder. Due to these limitations, CRU Exhibit 3 does not appear to present the type of data, or length of record, necessary for a definitive conclusion that the level of recharge of San Simeon alluvium is progressively declining. CRU also entered into evidence another regression analysis (CRU,2) based on water levels during the month of May. Again, there was no testimony presented by CRU regarding this analysis and it appears that there is either missing data or an incomplete explanation.

Evidence from the District's yield test in 1985 and data regarding similar extractions in 1986, coupled with information on upstream diversions by Pedotti, provide the most reliable evidence as to the maximum amount of water available to CCSD during the dry period. It would be logical to conclude, therefore, that the dry period diversion limitation in Permit 17287 should be reduced from 572 acre-feet to a maximum of 370 acre-feet. This latter amount is, by CCSD's own calculations, the maximum amount ordinarily available to the District during the dry period due to upstream diversions under claim of riparian right. (T,II,344:2-345:6) There is no evidence in the record that these upstream diversions will decrease in the future. They may, in fact, increase. Therefore, even if Pedotti and Warren temporarily return to dry farming or otherwise reduce their diversions, the additional water made available to CCSD could not be considered as a reliable quantity for allocation of water service. It is possible, however, that either by agreement or eminent domain proceedings, the District could cause a reduction in riparian water diversions, thereby increasing the water available for municipal use.

Based on the evidence of existing conditions, the Board concludes that the dry period diversion limitation should be reduced to 370 acre-feet. The Board should reserve jurisdiction, however, to increase this quantity up to 572 acre-feet in the event that at some future time, the District can demonstrate that through agreement with other water users or otherwise it has taken appropriate action to make additional water available for diversion by the District.

There is no reasonably conclusive evidence in this proceeding to alter the Board's prior finding regarding the amount of dry period channel storage remaining between the MWFDL and MSL. In Decision 1477, the Board estimated this amount to be 274 acre-feet. The District maintains that this amount exceeds 300 acre-feet but offered no supporting evidence. Both figures may be optimistic as the available evidence (STAFF,13; PEDOTTI,11) indicates that the alluvium is not a homogenous water bearing zone as assumed in Decision 1477. Rather there are heterogeneities throughout the San Simeon alluvium which may have a significant bearing on the amount of water available upstream of the CCSD well field.

The importance of these non-water bearing zones is twofold. First, they reduce the amount of water available for diversion through extraction wells. The second significant effect is that non-water bearing zones increase the difficulty and expense of deepening or relocating a well. Due to the inter-fingering of sands, silts and clays as well as probable boulders, it is probable that a number of test borings including water production tests, would be necessary to determine the best hydrogeologic site for a new well within a reasonable distance from the place of use.

In view of the limited and variable quantity of water available from San Simeon Creek and inasmuch as CCSD is proposing to use its full dry period yield from San Simeon Creek for purposes of allocating water service, the Board concludes that CCSD should be required to submit, or prepare and submit, a drought emergency plan. This plan should

include an estimate of the amount of water which would be available to CCSD from San Simeon Creek and other sources under runoff conditions similar to 1976-77.

5.4 Legal Principles Applicable to Conflicts Between Holders of Junior and Senior Water Rights

Article X, Section 2 of the California Constitution sets forth the fundamental principles governing water use in California as follows:

> "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.... This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained." (Emphasis added.)

First and foremost among the principles established by Article X, Section 2 is that the limited supplies of water available in California require that beneficial uses be maximized. Thus, the right to use water does not extend to unreasonable use, unreasonable method of use and unreasonable method of diversion. In Decision 1477, the Board referred to the reasonable use and reasonable method of diversion requirements as the basis for concluding that the riparian water users on San Simeon Creek were not entitled to have the water level in their wells maintained at a particular arbitrary depth.

Decision 1477 also cited People ex rel. State Water Resources Control Board v. Forni (1976) 54 Cal.App.3d 743, 126 Cal.Rptr. 851 as authority for the proposition that the riparian water users on San Simeon Creek may have to suffer some inconvenience and bear some expense even to the point of deepening their wells or installing new wells. Due to the insufficient information available at the time of Decision 1477, the Board was unable to determine precisely what adverse effects to the riparians' use of water would occur and what remedial measures would be necessary. Therefore, the Board expressly reserved "jurisdiction to amend, revise, supplement or delete terms and conditions in the permit and specifically to add terms and conditions which include suitable operational water supply criteria for the protection of vested rights and the public interest." (STAFF, 5, Condition 14.)

Based upon the information now available after several years of CCSD diversions, the nature and extent of the adverse impact to riparian water users is more fully known. In examining how the Board should exercise its reserved jurisdiction in a manner consistent with the protection of prior rights and the constitutional provisions regarding reasonable use and reasonable method of diversion, it is instructive to review prior judicial decisions dealing with reasonable use and with the "physical solution doctrine".

With respect to the reasonable use requirement, California courts have recognized in numerous instances that a determination of what is

"reasonable" is a question of fact to be determined according to the circumstances of each particular case. (Joslin v. Marin Mun. Water Dist. (1967) 67 Cal.2d 132, 139; 60 Cal.Rptr. 377; People ex rel. State Water Resources Control Board v. Forni (1976) 54 Cal.App.3d 743; 126 Cal.Rptr. 851.) As the court noted in the Forni decision, riparian water users "may properly be required to endure some inconvenience or to incur reasonable expenses" in order to comply with the constitutional standard of reasonable use, reasonable method of use and reasonable method of diversion (54 Cal.App.3d at 751).

In this instance, there is no evidence indicating that the riparians' use or method of use of water from San Simeon Creek is unreasonable. The District's legal brief questions whether the use of water from well 10G1 for gravel production should be protected based on language from Joslin v. Marin Mun. Water Dist., supra, stating that the mere amassing of sand and gravel is not a reasonable use of water. Other than the fact that both situations involve sand and gravel, however, the uses of water from well 10G1 and in Joslin have nothing in common. In Joslin, the riparian claimed a right to the unimpaired flow of the stream in order to deposit sand and gravel on his property for later excavation.

In the present case, the riparian seeks only to use a small portion of the underflow of the stream for washing sand and gravel, and for the manufacture of concrete. Based on the record before the Board, this industrial use of water appears entirely reasonable. Further, as Pedotti points out, the vast majority of the water used in the gravel

production operation is returned to the stream system. In the absence of any evidence indicating an unreasonable use or method of use, the Board's examination of the reasonableness with respect to exercise of riparian rights will be limited to examining the methods of diversion utilized by the riparians.

Although a water user may be required to incur reasonable expenses to establish a reasonable method of diversion, he "cannot be compelled to divert according to the most scientific methods" available. (Erickson v. Queen Valley Ranch Company (1971) 22 Cal.App.3d 578, 584, 99 Cal.Rptr. 446.) In a dispute between a junior and a senior water right holder there are reasonable limits to the extent of improvements or the expenditures which the holder of the senior right may be required to make in order to make water available for the junior right. (Peabody v. Vallejo (1935) 2 Cal.2d 351, 40 P.2d 486, 496.) What may be required will vary with the facts of each case, but simply because a particular improvement is or may be possible does not mean that the holder of a senior right must undertake it at his expense.

Nevertheless, the provisions of Article X, Section 2 require that the beneficial use of California's water resources be maximized. Therefore, in instances where satisfaction of senior rights leaves insufficient water available to meet the reasonable needs of junior diverters, the courts have strongly favored the use of "physical solutions" where possible in order to make sufficient water available to meet all identified needs. The subject of imposing a physical solution upon conflicting water users was addressed by the California Supreme Court in Peabody v. Vallejo, supra, as follows:

> "[I]f a physical solution be ascertainable, the court has the power to make and should make reasonable regulations for the use of the water by the respective parties, provided they be adequate to protect the one having the paramount right in the substantial enjoyment thereof and to prevent its ultimate destruction, and in this connection the court has the power to and should reserve unto itself the right to change and modify its orders and decree as occasion may demand, either on its own motion or on motion of any party. (40 P.2d at 449.)

Commenting in a later case on the use of a physical solution where none has been agreed to by the parties, the California Supreme Court stated the following:

> "Other suggestions as to possible physical solutions were made during trial. The trial court apparently took the view that none of them could be enforced by it unless the interested parties both agreed thereto. This is not the law. Since the adoption of the 1928 constitutional amendment, it is not only within the power but it is also the duty of the trial court to admit evidence relating to possible physical solutions, and if none is satisfactory to it to suggest on its own motion such physical solution. (Tulare Irr. Dist. v. Lindsay Strathmore Irr. Dist., supra, p. 574.) The court possesses the power to enforce such solution regardless of whether the parties agree." (City of Lodi v. East Bay Municipal Utility District (1936) 7 Cal.2d 316, 60 P.2d 439, 450.)

The Court went on to say in the Lodi decision that any substantial cost of implementing a physical solution should be borne by the holder of the junior right. (Id., 7 Cal.2d at 341, 60 P.2d at 450.)

Although the discussion of a physical solution in the above decisions occurred in the context of a lawsuit before a court, the same principles apply when the party or parties alleging injury file their

complaint with the Board. Issuance of a permit to CCSD was done with the express reservation of jurisdiction to amend the terms of the permit and to "add suitable operational water supply criteria for the protection of vested rights and the public interest." (Decision 1477, Condition 14.) This type of detailed and express reservation of jurisdiction indicates that even at the time of approving Application 25002, the Board envisioned that additional restrictions or some type of physical solution might be necessary in order to satisfy prior rights while still allowing diversion of water for municipal needs.

With respect to the conflict between the use of water by CCSD and the upstream riparian water users in the present case, the legal principles discussed above can be summarized as follows. First, the competing demands for the limited water supply available in the San Simeon Basin demonstrate the necessity of the constitutional mandate to maximize beneficial use of water. Second, in order to maximize the beneficial use of water, all water users are required to make a reasonable use of any water diverted using a reasonable method of use and a reasonable method of diversion. Third, establishing a reasonable method of use or reasonable method of diversion may entail some inconvenience or expense, on the part of all water users, but it does not necessarily require diversion by the most scientific method available. Fourth, if the competing needs for water under CCSD's junior appropriative right and the senior rights of the upstream riparians can be met only through imposition of a physical solution, then the Board should consider imposition of such a solution. Fifth

and finally, if any substantial expense is necessary in order to implement a physical solution to make water available for diversion by the District while protecting the reasonable use of water under senior riparian rights, the District should be responsible for such expense. The District's permit was issued subject to vested rights. Consequently, diversion and use of water by the District is not allowed at any time such diversion will interfere with the reasonable exercise of riparian rights.

5.5 Reasonableness and Protection of Diversions Under Senior Rights

Table 4 presents a summary of problems encountered at Pedotti's and Warren's extraction wells since CCSD commenced diversions from its San Simeon Creek well field in March 1979. There is no evidence in the record that District pumping has adversely impacted wells 9J2, 9J3, 10A2, 10A3, and 10M2 except for lowering the water levels in these relatively deep wells. The capacity of these wells to sustain the current level of extractions by Pedotti has not been adversely affected. (PEDOTTI,1) The increased pumping costs resulting from lower water levels falls within the scope of the type of reasonable expenses which riparian or appropriative water right holders may be forced to bear in order to comply with the constitutional mandate to maximize beneficial uses and to employ a reasonable method of diversion.

With respect to the riparian extraction wells which have been adversely affected since CCSD commenced diversions, the issue is whether the wells provide a reasonable method of diversion for water

use under the senior riparian rights. In all instances where a particular riparian extraction well constitutes a reasonable method of diversion under the existing circumstances, then the diversion and use of that water should be protected against infringement by diversion of water under CCSD's appropriative water right. A summary of the problems encountered with the riparian wells, attempted improvements or remedies for those problems and the District's response was provided in Sections 3.0 through 4.0 above. The Board's evaluation of the identified problems and appropriate remedial measures is set forth in Sections 5.5.1 through 5.6 below.

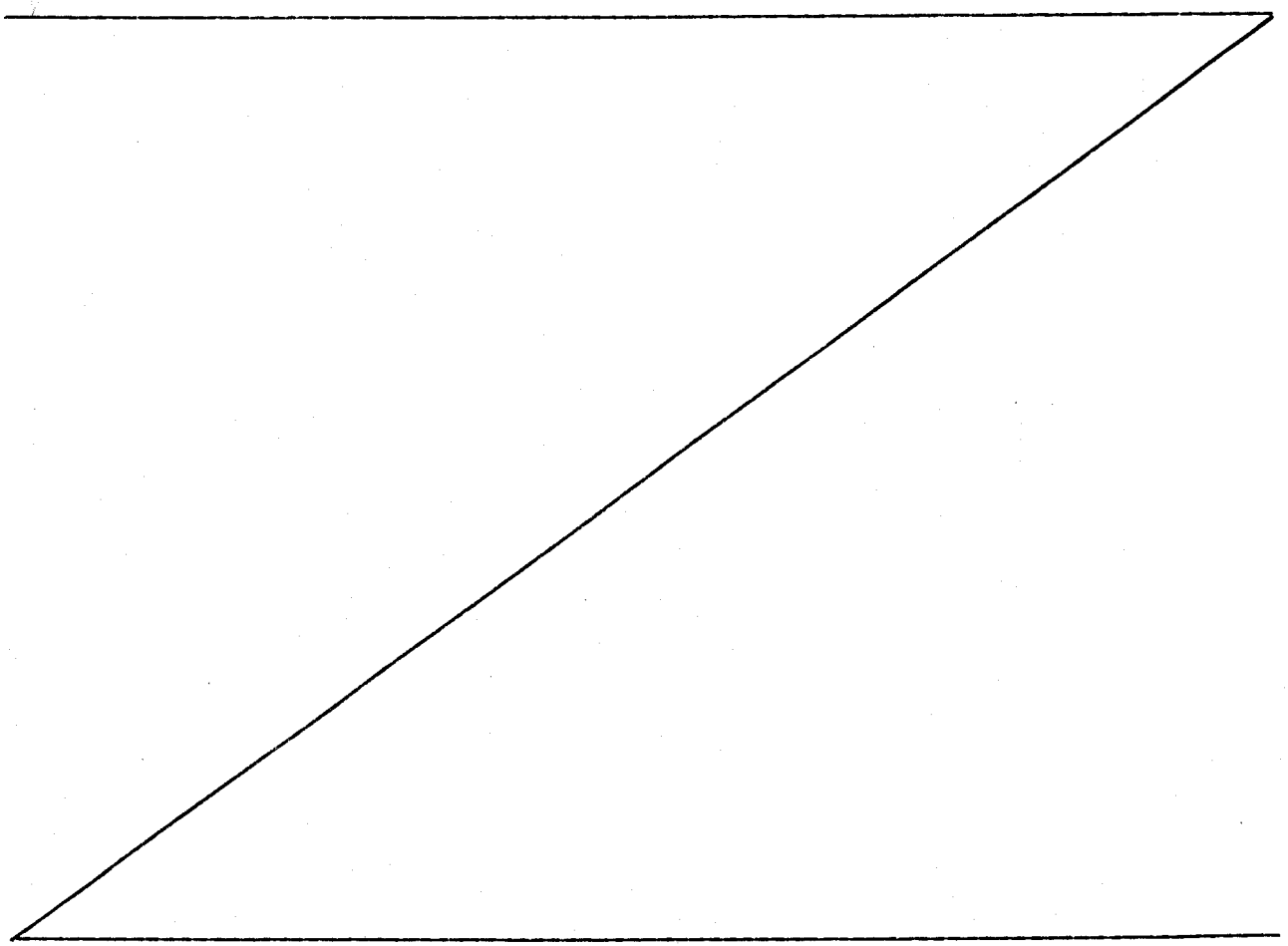


TABLE 4

RIPARIAN PRODUCTION WELLS

WELL NO.	DEPTH	OWNER	PROBLEMS EXPERIENCED SINCE 1979			APPROXIMATE DISTANCE UPSTREAM FROM CCSD WELL SS1
			NONE	DRY	UNDEPENDABLE	
9K1	32'	Warren		Summer 1984 & 85		(within CCSD well field)
9J1	22'	Pedotti		Fall 1984 & 85		600'
9J2	87'	Pedotti	X			1,000'
9J3	73'	Pedotti	X			1,000'
10M2	80'	Pedotti	X			2,300'
10F1	33'	Warren		Fall 1984 & 85		4,000'
10G1	52'	Pedotti			Fall 1984 & 85	4,700'
10A2	70'	Pedotti	X			5,500'
10A3	80'	Pedotti	X			6,300'
11C1	87'	Pedotti			Fall 1985	10,200'

5.5.1 Well 9K1

This relatively shallow well went dry in 1984 and 1985. It is located essentially within the CCSD well field and it is probably within the cone of depression of District wells SS2 and SS3. Warren claims that a test boring in July 1985 near well 9K1 showed that deepening this well would be infeasible due to the presence of "hardpan" from a depth of 37 feet to about 42 feet where the drilling was stopped. No description of this "hardpan" is provided in the well log. It could

be simply a relatively hard layer or, due to the short distance from the canyon wall, the test boring may have hit bedrock. Well 9K1 is located on a 20-foot square parcel of land with a connecting easement to Warren's property. In view of the small size of the parcel of property and its location within the CCSD well field, the prospects for relocating the well are very limited.

The District recognized that its diversions from San Simeon Creek have adversely impacted well 9K1 and the District has been providing Warren with an alternate water supply as needed. The Board concludes that the District should be responsible for continuing to provide an alternate supply of water for Warren's valid riparian use, including any future increases in use, at such times that CCSD diversions render well 9K1 unusable. The real issue between the District and Warren appears to be the extent of Warren's valid riparian uses. As noted in Section 3.2.1, Warren is not entitled to the use of water from San Simeon Creek in the Van Gorden Creek watershed under claim of riparian right. Disagreement over the extent of Warren's riparian right is a matter for resolution through the courts, if necessary. (T,I,197:18-198:2; T,I,199:13-200:15; T,I,201:23-26; STAFF,13)

5.5.2 Well 9J1

Well 9J1 is the shallowest of the ten riparian production wells and it is operated by a windmill. When it went dry in late 1984 and late 1985, Pedotti switched to nearby well 9J3 for his domestic and stockwatering needs. This caused no apparent problems except for an increase in pumping costs since the windmill could not be used.

Although CCSD pumping has adversely impacted well 9J1, the Board concludes that, under the circumstances described, this impact is not unreasonable and that no remedial action is required. (T,I,124:23-125:3; PEDOTTI,1)

5.5.3 Well 10F1

Well 10F1 is a relatively shallow well located some 4,000 feet upstream of the CCSD well field. It went dry in late 1984 and late 1985. The District's position is that it is only "partially" responsible for drying up well 10F1, due to its distance from the District well field and the influence of other riparian wells. In the absence of District pumping, however, it is apparent that well 10F1 would not have gone dry. Nevertheless, with a depth of only 33 feet, the Board concludes that under the circumstances existing on San Simeon Creek, well 10F1 does not provide a reasonable method of diversion entitled to protection against the lowering of the water level by CCSD.

In an attempt to develop a new well which would provide a more efficient method of diversion, Warren has had two test borings drilled above and near well 10F1. Both test borings indicate a water bearing formation to depths of at least 46 to 50 feet. The well logs contain insufficient detail to provide an accurate description of subsurface conditions and no water production tests were performed. (STAFF,13) Therefore, it is unknown if a well of adequate capacity can be drilled in this area to replace well 10F1. As discussed in Section 3.2 above, however, Warren has applied for a permit from the Coastal Commission

to drill a well at this site. If the new well does not provide an adequate supply of water to meet Warren's reasonable riparian needs in the area which it is designed to service, the Board concludes that CCSD should be required to provide Warren with an alternative supply. The District may provide such a supply at its option through installation of a new well, improvements to well 10F1 or the replacement well if feasible, or delivery of water via pipeline from District wells.

5.5.4 Well 10G1

Well 10G1 is equipped with a 400 gallon per minute turbine pump with a fixed level intake. When the static water level drops below 28 to 29 feet from the top of the well casing, the pump pulls air. The evidence as summarized in Sections 3.0 to 4.0 above, makes it apparent that water in well 10G1 would not have fallen below this level in 1984 and 1985 in the absence of CCSD diversions.

There was no evidence presented to establish that use of a submersible pump as recommended by the District would be more effective than a turbine pump in a well of this depth, assuming that the pump intake level is the same. Lowering the level of the intake of the existing pump, however, would allow pumping water which may be present at lower depths in the well. Also, well 10G1 is at least 29 years old (PEDOTTI,2) and, depending on subsurface conditions, wells over about 20 years old are likely to have a major portion of the perforated casing clogged by incrustants. Considering that perforated casings do

not have a high percentage of open area when first installed, after time they must be cleaned to remain functional. While lowering the pump intake and cleaning the well perforations may help, it is uncertain as to whether such measures would compensate for the impact caused by CCSD pumping. The Board finds that lowering the pump intake and cleaning the well perforations do not amount to an unreasonable burden to be borne by a riparian water user in the circumstances of this case. Since well 10G1 appears to bottom in bedrock, deepening the well would not improve its operation.

The log from the test boring, which was drilled about 40 feet from well 10G1 shows a high water table at 16 feet. This is followed by sand to a depth of 54 feet, then sands interspersed with clay to a depth of 65 feet with sandy clay below 65 feet. Therefore, it appears that water bearing material is present at least to a depth of 54 feet and possibly to a depth of 65 feet. Since no water production tests were performed, the water transmitting properties of a well in this location are not known. (T,II,332:14-15; PEDOTTI,11)

If lowering the pump intake and cleaning the well perforations do not improve the production from well 10G1 to sufficiently meet the reasonable riparian demand for water, the Board concludes that CCSD should be required to provide Pedotti with an alternative supply of water through installation of a new well or delivery of water to the riparian place of use from District wells. The costs of any such measures should be borne by CCSD under the physical solution doctrine.

5.5.5 Well 11C1

Well 11C1 is 87 feet deep and appears to have bottomed in bedrock. The problem encountered with well 11C1 was similar to that of well 10G1. In the case of well 11C1, the static water level reached an all time low in October 1985 resulting in the well being unable to deliver water at the required rate of 400 gallons per minute for the first time.

As the District points out, the influence of CCSD pumping on upstream water levels decreases with the distance from the CCSD well field. Pedotti also acknowledged that the pumping of his other wells affects the water level in well 11C1. The fact remains, however, that this well and practically all of the other wells on San Simeon Creek, reached their lowest water levels of record during the same period that CCSD conducted its yield test in 1985. Furthermore, the dry period in 1985 was about average for the period of record whereas in 1984, when no production problems were experienced with well 11C1, the dry period is estimated to be the longest since the 1976-77 drought. Therefore, based on the available evidence, the Board concludes that diversion of water by CCSD under Permit 17287 affects water levels in wells located upstream at least as far as well 11C1.

Though this well is 87 feet deep, the well log (STAFF,13) indicates that the only water producing zone appears to be a 20-foot vertical section between the 40-foot and 60-foot depths. This is the only

information in the record regarding the hydrogeology in this area of San Simeon Creek. The well log indicates that well 11C1 cannot be deepened and it is questionable if there is any water bearing material of adequate volume below a depth of approximately 60 feet in this reach of the stream. Thus, this 10-year old well appears to provide a reasonable method of diversion.

In order to protect the senior right of Pedotti, the Board concludes that CCSD should be required to provide an alternative supply of water to the area served by well 11C1, anytime that there is insufficient water available to meet reasonable riparian needs. The District, at its option, may provide such a supply through installation of a new well, improvements to well 11C1 or delivery of water to the riparian place of use from District wells. The costs of any such measures should be borne by CCSD under the physical solution doctrine.

5.6 Other Restrictions Proposed By Complainants

As discussed in Sections 3.1 through 3.3, the complainants offered a number of alternative conditions that could be imposed on CCSD for the protection of riparian rights. Both CRU and Warren requested that the MWFDL be enforced as a limitation on District diversions and CRU further requested that water levels be measured on a dynamic rather than static basis. Warren also requested that CCSD diversions be limited to 30 acre-feet per month. For reasons discussed in Sections 5.1 and 5.3, the Board concludes that these limitations are unwarranted.

In addition, Pedotti requested that CCSD be required to cease diversions when the static water level in well 9J2 declines to 20 feet above MSL. No particular reason or justification was provided for selecting the 20-foot level. In Decision 1477, the Board rejected a similar condition on the basis that it lacked evidence relative to reasonableness. The Board also rejects including such a condition at the present time since it would preclude the use of waters in storage in the alluvium beneath the specified depth.

As an alternative to the above, Pedotti requested that CCSD diversions be limited to such times as there is a live stream from Palmer Flats to the ocean or when there is at least a flow of 2 cubic feet per second at Palmer Flats. For all practical purposes, either of these conditions would limit CCSD diversions to the wet period of the year. No evidence or justification was provided for these conditions, which are much more restrictive than the maintenance of the water level in well 9J2 at 20 feet above MSL.

6.0 SUMMARY

As explained in Section 5.1, the Board concludes that the reference to the Maximum Well Field Drawdown Line in Decision 1477 was not intended to establish a separate restriction on diversions by CCSD, and that said line would be an inappropriate criterion for limiting the diversion of water by CCSD. Measurements of well water levels on a static basis is more representative of regional water levels in the San Simeon Creek alluvium than is measurement on a dynamic basis. CCSD may pump water levels in its well field to as low as mean sea

level based on well measurements following a two-hour shutdown period provided that: (1) the District complies with all requirements that this Board or the Regional Water Quality Control Board may impose for water quality purposes; (2) the District does not infringe upon the reasonable exercise of prior rights; and (3) the District complies with all other terms and conditions of its permit.

Based on the available information regarding San Simeon Creek streamflow and water use, the Board concludes that the dry period specified for diversion limitations set forth in Permit 17287 should be amended to begin on the first day of no flow at Palmer Flats each year and should extend through October 31 of each year (as compared to the existing period of July 1-November 20). (See Section 5.2.) In addition, based on the evidence concerning water use and availability discussed in Section 5.3, the dry period diversion limitation in Permit 17287 should be reduced from 572 acre-feet to 370 acre-feet under present conditions.

The diversion of water from San Simeon Creek by CCSD has adversely affected the availability of water to the upstream riparian users. Of the ten riparian extraction wells shown in Table 5, five experienced water production problems during the District's yield test in 1985. Of these five wells, four were also dry or unpumpable at times during the summer or fall of 1984. The legal principles applicable to resolution of conflicts between use of water by CCSD and the riparian users are summarized in Section 5.4. Based on the evidence presented

and the applicable legal principles, the Board's conclusions regarding each of the five wells which have experienced problems are summarized below.

Well 9K1: The District recognizes that its diversion from San Simeon Creek under full yield has adversely impacted well 9K1 and has been providing Warren with an alternate supply when insufficient water is available from well 9K1. This practice should be required as a condition of Permit 17287 provided that the water is used on land riparian to San Simeon Creek.

Well 9J1: Pedotti has a nearby well to provide water when well 9J1 goes dry. The Board concludes that no remedial action should be required by the District for impacts on this very shallow well.

Well 10F1: Under the circumstances existing on San Simeon Creek, the Board does not believe that well 10F1 provides a reasonable method of diversion entitled to protection against the lowering of the water level by CCSD. Warren has taken preliminary steps to replace this relatively shallow well. If, and at such times as, the replacement well proves insufficient to meet Warren's reasonable riparian requirements in the area served by well 10F1, the District should be required to provide a substitute supply of water through installation of a new well, improvements to well 10F1 or its replacement or delivery of water to the riparian place of use from District wells.

Well 10G1: The constitutional mandate to employ a reasonable method of diversion entitled to protection against infringement by a

junior appropriator would, in this instance, require cleaning the well perforations and lowering the level of the pump intake. If such improvements are not sufficient to meet Pedotti's reasonable riparian requirements in the area served by well 10G1, the District should be required to provide a substitute supply of water through installation of a new well or delivery of water to the riparian place of use from District wells.

Well 11C1: The evidence in the record shows that well 11C1 is a reasonable method of diversion which has been adversely affected by District pumping. CCSD should be required to provide an alternative supply of water to the area served by well 11C1 anytime that there is insufficient water available to meet reasonable riparian needs. The District, at its option, may provide such a supply through installation of a new well, improvements to well 11C1 or delivery of water to the riparian place of use from District wells.

In instances in which the District elects to supply water to the riparian place of use from the District well field, the riparian diverter should be responsible for paying the estimated costs which would have been incurred to pump water from the affected well. In the absence of an agreement between the parties, relative to pumping costs, such costs should be based on an average amount per acre-foot for pumping water from the affected well over the prior three years during the month in question. Furthermore, the District should be responsible for the installation and maintenance of the water conveyance facilities needed to deliver water to the riparian place of use.

The complainants proposed a number of conditions for the regulation of CCSD diversions in order to protect senior rights. For the reasons specified in Section 5.6, the Board concludes that none of these conditions should be included as terms of the CCSD permit except for requiring the District to provide an alternate supply of water to the riparian place of use under circumstances previously discussed. With respect to the amendments or additions to the conditions of Permit 17287 discussed in this order, such revisions can be done pursuant to the Board's reservation of jurisdiction as stated in the permit.

Permit 17287 was issued subject to prior rights. CCSD cannot divert water under the permit if such diversion interferes with the reasonable exercise of prior rights. In order to maximize the beneficial use of water, provision 2 of the order which follows specifies physical solutions through which reasonable riparian water usage can be protected while allowing diversion under CCSD's junior appropriative right. As a practical matter, maximization of beneficial uses also will require the cooperation of all affected parties, and the Board urges such parties to act accordingly.

ORDER

NOW, THEREFORE, IT IS ORDERED that the terms and conditions of Permit 17287 be amended as specified below:

1. Condition 5 shall be amended to read as follows:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 370 acre-feet between the date that surface flow first ceases at the Palmer Flats gaging station and October 31 of each year or 1,230 acre-feet per annum. The Board reserves jurisdiction to increase the diversion limitation of 370 acre-feet, up to a maximum of 572 acre-feet, should the permittee demonstrate that it has taken the necessary action to make such additional water available. Any water supplied for satisfaction of riparian rights on San Simeon Creek shall not be considered as water appropriated under this permit.

2. Condition 21 shall be added to Permit 17287 as follows:

This permit is specifically subject to the diversion of water by Jon Pedotti, Willis Warren, Susan Keller, and Clyde Warren and their successors in interest under valid claim of riparian right in accordance with the following conditions:

a. At such time as permittee is diverting water authorized under this permit and the water level in well 9K1 reaches a depth which renders the well unusable, permittee shall deliver water from its point of diversion to the riparian place of use served by well 9K1 in amounts

necessary to meet the reasonable riparian needs of Warren and his successors in interest.

b. At such time as permittee is diverting water authorized under this permit and the water level in any replacement well for well 10F1 reaches a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 10F1 in amounts necessary to meet the reasonable riparian needs of Warren and his successors in interest:

(1) Make improvements to well 10F1 or its replacement well;

(2) Install a new well;

(3) Deliver water from permittee's point of diversion to the riparian place of use served by well 10F1.

c. At such time as permittee is diverting water authorized under this permit and the water level in well 10G1 reaches a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 10G1 in amounts necessary to meet the reasonable riparian needs of Pedotti and his successors in interest:

(1) Install a new well;

(2) Deliver water from permittee's point of diversion to the riparian place of use served by well 10G1.

This requirement shall only apply in the event that the owner of well 10G1 has cleaned the well perforations using an acid wash and has lowered the level of the pump intake to as near the bottom of the well as feasible.

d. At such time as permittee is diverting water authorized under this permit and the water level in well 11C1 reaches a depth which renders the well unusable, permittee shall, at its option, take one or more of the following actions to supply water to the riparian place of use served by well 11C1 in amounts necessary to meet the reasonable riparian needs of Pedotti and his successors in interest:

(1) Make improvements to well 11C1;

(2) Install a new well;

(3) Deliver water from its point of diversion to the riparian place of use served by well 11C1.

In the event that permittee opts to deliver water to the riparian place of use of any of the above wells, the riparian diverter shall be liable for the estimated costs which the riparian would have incurred to pump water from the affected well. In the absence of an agreement between the parties relative to pumping costs, the costs shall be based on an average amount per acre-foot for pumping water from the affected well during the month in question over the prior three years. Permittee shall pay the cost of installing and maintaining any water conveyance facilities needed to deliver water to the riparian place of use.

3. Condition 22 shall be added to Permit 17287 as follows:

Permittee shall prepare and submit, by January 1, 1989, a drought emergency plan including an estimate of the amount of water available to permittee from San Simeon Creek as well as other sources under runoff conditions similar to 1976-77.

4. Condition 23 shall be added to Permit 17287 as follows:

Permittee shall consult with the Division of Water Rights and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the State Water Resources Control Board for approval by January 1, 1989, or such further time as may, for good cause shown, be allowed by the Board. A progress report on the development of a water conservation program may be required by the Board at any time within this period.

All cost-effective measures identified in the water conservation program shall be implemented in accordance with the schedule for implementation found therein.

IT IS FURTHER ORDERED that, in order to provide the Board adequate information for evaluation of water use from San Simeon Creek, Willis Warren, Clyde Warren, Susan Keller and Jon Pedotti, and their successors in interest shall file complete and accurate Statements of Water Diversion and Use on a timely basis with the Division of Water Rights. Willis Warren, Clyde Warren, Susan Keller, Jon Pedotti, Cambria Community Services District, and their successors in

interest, also shall file appropriate well logs on a timely basis with the Department of Water Resources, and shall make such well logs and related information available to the Division of Water Rights upon request.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 21, 1988.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Danny Walsh

NO: None

ABSENT: Eliseo M. Samaniego

ABSTAIN: None

Maureen Marche'
Administrative Assistant to the Board

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 17287

Application 25002 of Cambria Community Services District

P. O. Box 65, Cambria, California 93428

filed on February 23, 1976, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source: San Simeon Creek (underflow)

Tributary to: Pacific Ocean

2. Location of point of diversion: California Coordinate System, Zone 5	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridan
1. N778,716.2816; E1,076,134.223	NE¼ of SE¼	9	27S	8E	MD
2. N778,961.0690; E1,076,080.025	NE¼ of SE¼	9	27S	8E	MD
3. N779,003.2366; E1,075,574.961	NW¼ of SE¼	9	27S	8E	MD

County of San Luis Obispo

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridan	Acres
Municipal	Within the boundaries of					
	the Cambria Community Services					
	District in:		27S	8E	MD	
			28S	8E	MD	

The place of use is shown on map filed with the State Water Resources Control Board.

27963-983 10-74 2M OSP

5. THE WATER APPROPRIATED SHALL BE LIMITED TO THE QUANTITY WHICH CAN BE BENEFICIALLY USED AND SHALL NOT EXCEED 2.5 CUBIC FEET PER SECOND TO BE DIVERTED FROM JANUARY 1 TO DECEMBER 31 OF EACH YEAR. THE MAXIMUM AMOUNT DIVERTED UNDER THIS PERMIT SHALL NOT EXCEED 572 ACRE-FEET BETWEEN JULY 1 AND NOVEMBER 20 OF EACH YEAR OR 1,230 ACRE-FEET PER ANNUM.

6. THE AMOUNT AUTHORIZED FOR APPROPRIATION MAY BE REDUCED IN THE LICENSE IF INVESTIGATION WARRANTS.

7. ACTUAL CONSTRUCTION WORK SHALL BEGIN ON OR BEFORE SIX MONTHS FROM DATE OF PERMIT AND SHALL THEREAFTER BE PROSECUTED WITH REASONABLE DILIGENCE, AND IF NOT SO COMMENCED AND PROSECUTED, THIS PERMIT MAY BE REVOKED.

8. SAID CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE DECEMBER 1, 1979.

9. COMPLETE APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE MADE ON OR BEFORE DECEMBER 1, 1995.

10. PROGRESS REPORTS SHALL BE SUBMITTED PROMPTLY BY PERMITTEE WHEN REQUESTED BY THE STATE WATER RESOURCES CONTROL BOARD UNTIL LICENSE IS ISSUED.

11. PERMITTEE SHALL ALLOW REPRESENTATIVES OF THE STATE WATER RESOURCES CONTROL BOARD AND OTHER PARTIES AS MAY BE AUTHORIZED FROM TIME TO TIME BY SAID BOARD, REASONABLE ACCESS TO PROJECT WORKS TO DETERMINE COMPLIANCE WITH THE TERMS OF THIS PERMIT.

12. PURSUANT TO CALIFORNIA WATER CODE SECTION 100, ALL RIGHTS AND PRIVILEGES UNDER THIS PERMIT AND UNDER ANY LICENSE ISSUED PURSUANT THERETO, INCLUDING METHOD OF DIVERSION, METHOD OF USE, AND QUANTITY OF WATER DIVERTED, ARE SUBJECT TO THE CONTINUING AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD IN ACCORDANCE WITH LAW AND IN THE INTEREST OF THE PUBLIC WELFARE TO PREVENT WASTE, UNREASONABLE USE, UNREASONABLE METHOD OF USE, OR UNREASONABLE METHOD OF DIVERSION OF SAID WATER.

THIS CONTINUING AUTHORITY OF THE BOARD MAY BE EXERCISED BY IMPOSING SPECIFIC REQUIREMENTS OVER AND ABOVE THOSE CONTAINED IN THIS PERMIT WITH A VIEW TO MINIMIZING WASTE OF WATER AND TO MEETING THE REASONABLE WATER REQUIREMENTS OF PERMITTEE WITHOUT UNREASONABLE DRAFT ON THE SOURCE. PERMITTEE MAY BE REQUIRED TO IMPLEMENT SUCH PROGRAMS AS (1) REUSING OR RECLAIMING THE WATER ALLOCATED; (2) RESTRICTING DIVERSIONS SO AS TO ELIMINATE AGRICULTURAL TAILWATER OR TO REDUCE RETURN FLOW; (3) SUPPRESSING EVAPORATION LOSSES FROM WATER SURFACES; (4) CONTROLLING PHREATOPHYTIC GROWTH; AND (5) INSTALLING, MAINTAINING, AND OPERATING EFFICIENT WATER MEASURING DEVICES TO ASSURE COMPLIANCE WITH THE QUANTITY LIMITATIONS OF THIS PERMIT AND TO DETERMINE ACCURATELY WATER USE AS AGAINST REASONABLE WATER REQUIREMENTS FOR THE AUTHORIZED PROJECT. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD DETERMINES, AFTER NOTICE TO AFFECTED PARTIES AND OPPORTUNITY FOR HEARING, THAT SUCH SPECIFIC REQUIREMENTS ARE PHYSICALLY AND FINANCIALLY FEASIBLE AND ARE APPROPRIATE TO THE PARTICULAR SITUATION.

13. THE QUANTITY OF WATER DIVERTED UNDER THIS PERMIT AND UNDER ANY LICENSE ISSUED PURSUANT THERETO IS SUBJECT TO MODIFICATION BY THE STATE WATER RESOURCES CONTROL BOARD IF, AFTER NOTICE TO THE PERMITTEE AND AN OPPORTUNITY FOR HEARING, THE BOARD FINDS THAT SUCH MODIFICATION IS NECESSARY TO MEET WATER QUALITY OBJECTIVES IN WATER QUALITY CONTROL PLANS WHICH HAVE BEEN OR HEREAFTER MAY BE ESTABLISHED OR MODIFIED PURSUANT TO DIVISION 7 OF THE WATER CODE. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD FINDS THAT (1) ADEQUATE WASTE DISCHARGE REQUIREMENTS HAVE BEEN PRESCRIBED AND ARE IN EFFECT WITH RESPECT TO ALL WASTE DISCHARGES WHICH HAVE ANY SUBSTANTIAL EFFECT UPON WATER QUALITY IN THE AREA INVOLVED, AND (2) THE WATER QUALITY OBJECTIVES CANNOT BE ACHIEVED SOLELY THROUGH THE CONTROL OF WASTE DISCHARGES.

14. THIS PERMIT SHALL NOT BE CONSTRUED AS CONFERRING UPON THE PERMITTEE RIGHT OF ACCESS TO THE POINT OF DIVERSION.

15. NO WATER SHALL BE USED UNDER THIS PERMIT UNTIL THE PERMITTEE HAS FILED A REPORT OF WASTE DISCHARGE WITH THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION, PURSUANT TO WATER CODE SECTION 13260, AND THE REGIONAL BOARD OR STATE WATER RESOURCES CONTROL BOARD HAS PRESCRIBED WASTE DISCHARGE REQUIREMENTS OR HAS INDICATED THAT WASTE DISCHARGE REQUIREMENTS ARE NOT REQUIRED. THEREAFTER, WATER MAY BE DIVERTED ONLY DURING SUCH TIMES AS ALL REQUIREMENTS PRESCRIBED BY THE REGIONAL BOARD OR STATE BOARD ARE BEING MET. NO DISCHARGES OF WASTE TO SURFACE WATER SHALL BE MADE UNLESS WASTE DISCHARGE REQUIREMENTS ARE ISSUED BY A REGIONAL BOARD OR THE STATE BOARD. A DISCHARGE TO GROUND WATER WITHOUT ISSUANCE OF A WASTE DISCHARGE REQUIREMENT MAY BE ALLOWED IF AFTER FILING THE REPORT PURSUANT TO SECTION 13260:

(1) THE REGIONAL BOARD ISSUES A WAIVER PURSUANT TO SECTION 13269, OR
(2) THE REGIONAL BOARD FAILS TO ACT WITHIN 120 DAYS OF THE FILING OF THE REPORT.

NO REPORT OF WASTE DISCHARGE PURSUANT TO SECTION 13260 OF THE WATER CODE SHALL BE REQUIRED FOR PERCOLATION TO THE GROUND WATER OF WATER RESULTING FROM THE IRRIGATION OF CROPS.

16. PERMITTEE SHALL MAINTAIN WATER LEVELS IN THE LOWER BASIN TO SUSTAIN STREAM FLOW TO THE LAGOON AT THE MOUTH OF SAN SIMEON CREEK TO MAINTAIN FISH AND RIPARIAN WILDLIFE HABITAT.

17. PERMITTEE SHALL PROVIDE AND OPERATE AS NECESSARY, IRRIGATION FACILITIES TO MAINTAIN RIPARIAN VEGETATION WITHIN DISTRICT OWNED PROPERTY.

18. IN ACCORDANCE WITH SECTION 1601 OF THE FISH AND GAME CODE, NO WATER SHALL BE DIVERTED UNDER THIS PERMIT UNTIL THE DEPARTMENT OF FISH AND GAME HAS DETERMINED THAT MEASURES NECESSARY TO PROTECT FISH AND WILDLIFE RESOURCES HAVE BEEN INCORPORATED INTO THE PLANS AND CONSTRUCTION OF SUCH DIVERSION. THE CONSTRUCTION, OPERATION AND MAINTENANCE COSTS OF ANY FACILITY REQUIRED PURSUANT TO THIS PROVISION SHALL BE BORNE BY THE PERMITTEE.

19. FOR THE PURPOSE OF PROTECTING VESTED RIGHTS APPROVAL OF THE LOCATION OF ALL PRODUCTION WELLS BY THE CHIEF OF THE DIVISION OF WATER RIGHTS IS REQUIRED PRIOR TO DIVERSION UNDER THIS PERMIT.

20. THE BOARD RESERVES JURISDICTION TO AMEND, REVISE, SUPPLEMENT OR DELETE TERMS AND CONDITIONS IN THE PERMIT TO PROTECT VESTED RIGHTS AND SPECIFICALLY TO ADD TERMS AND CONDITIONS WHICH WOULD INCLUDE SUITABLE OPERATIONAL WATER SUPPLY CRITERIA FOR THE PROTECTION OF VESTED RIGHTS AND THE PUBLIC INTEREST.